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Supreme Court of the United States

October Term, 1981

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO; AND BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO,

Petitioners,

v.

JOSEPH TERRELL, JR., WALTER DUDLEY, THOMAS GREEN, JOHNNY LONG, ALBERT MASON, MARCUS OAKES, SAM WALKER, ET AL.,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ~~FIFTH CIRCUIT~~ ELEVENTH CIRCUIT

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APPENDIX A

[644 F.2d, at 1112]

Joseph TERRELL, Walter Dudley, Thomas Green, Johnny Long, Albert Mason, Marcus Oakes, Sam Walker, on behalf of themselves and the class they represent, Plaintiffs-Appellants,

v.

UNITED STATES PIPE & FOUNDRY CO. et al., Defendants,

Local 2140, United Steelworkers Union Local 342, International Molders, Allied Workers Union, et al., Defendants-Appellees.

Joseph TERRELL, Jr., et al., Plaintiffs-Appellants,

v.

UNITED STATES PIPE & FOUNDRY CO. et al., Defendants,

Local 2140, United Steelworkers Union, Defendant-Appellee.
Nos. 80-7107, 80-7256.

United States Court of Appeals,
Fifth Circuit.
Unit B
May 14, 1981.

Rehearing and Rehearing En Banc
Denied Aug. 7, 1981.

The United States District Court for the Northern District of Alabama at Birmingham, Sam C. Pointer, Jr., J., held that all but one aspect of a seniority system

[644 F.2d, at 1112]

was bona fide and that charges filed with the Equal Employment Opportunity Commission in 1969 failed to name as respondents international unions. The Court also refused to excuse one union from legal responsibility for the seniority system. On appeal and cross appeal, the Court of Appeals, Hatchett, Circuit Judge, held that: (1) record clearly demonstrated racially discriminatory purposes underlying the creation and maintenance of the seniority system, which thus was not bona fide; (2) record demonstrated that one union had taken every reasonable step to eradicate such discriminatory system and thus was excluded from liability for the system; and (3) allegations in 1969 charges before the Equal Employment Opportunity Commission did not clearly implicate the international unions and thus their liability would not commence until 180 days prior to 1973 amended charges.

Affirmed in part, reversed in part, and remanded.

1. Civil Rights 9.12

For seniority system to be bona fide, it must not have been created or maintained with intention to discriminate. Civil Rights Act of 1964, §§ 703, 703(h) as amended 42 U.S.C.A. §§ 2000e−2, 2000e−2(h).

2. Civil Rights 9.12

Court in determining whether particular seniority system stems from nondiscriminatory motivations should determine whether system operates to discourage all employees equally from transferring between seniority units, whether seniority units are in same or separate bargaining units, and, if the latter, whether structure is rational and in conformance with industry practice, whether system had its genesis in racial discrimination and whether

system was negotiated and has been maintained free from any illegal purpose. Civil Rights Act of 1964, § 703(h) as amended 42 U.S.C.A. § 2000e−2(h); 42 U.S.C.A. § 1981.

3. Civil Rights 9.12

Immunity created by equal employment opportunity provision of Civil Rights Act of 1964 for certain seniority systems extends to systems with disparate racial impact only when differences in treatment are not result of intention to discriminate because of race. Civil Rights Act of 1964, § 703(h) as amended 42 U.S.C.A. § 2000e−2(h); 42 U.S.C.A. § 1981.

4. Civil Rights 44(1)

District court in equal employment opportunity suit correctly found, on evidence, that seniority system had its genesis in purposeful racial discrimination, but erred in concluding that system was negotiated and maintained free of discriminatory purposes. Civil Rights Act of 1964, § 703(h) as amend- [644 F.2d, at 1113] ed 42 U.S.C.A. § 2000e–2(h); 42 U.S.C.A. § 1981.

5. Civil Rights 9.12

Disparate impact of seniority system on black employees was not only relevant evidence of discriminatory purpose but could conclusively resolve "equality" factor in favor of those suffering such discrimination, and system was not saved by facial equality. Civil Rights Act of 1964, § 703(h) as amended 42 U.S.C.A. § 2000e–2(h); 42 U.S.C.A. § 1981.

[644 F.2d, at 1113]

6. Civil Rights 9.12

One factor which could be considered in determining purposes underlying seniority system was overly discriminatory policy of each of craft unions at time when seniority system was created and "corrected" to follow racial lines, and such policies were strong additional evidence of racial motivations underlying system defended by craft unions in face of mounting opposition by company and other union. Civil Rights Act of 1964, § 703(h) as amended 42 U.S.C.A. § 2000e–2(h); 42 U.S.C.A. § 1981.

7. Civil Rights 9.10

One reason for caution in excusing party involved in unlawful employment practice stems from congressional purpose of stimulating self-corrective action by employers and unions. Civil Rights Act of 1964, § 703(h) as amended 42 U.S.C.A. § 2000e–2(h); 42 U.S.C.A. § 1981.

8. Civil Rights 39

Whether party involved in established equal employment opportunity violation may be excused from liability turns upon whether that party has proved to full satisfaction of courts that it has taken every reasonable step to bring employment practices into compliance with law, and even union which signs contract establishing unlawful seniority system may suffer no liability if it actively opposed adoption of the system. Civil Rights Act of 1964, § 703(h) as amended 42 U.S.C.A. § 2000e–2(h).

9. Civil Rights 39

On record, particular labor union, local lodge of which was consistently represented by black officials, diligently sought to bring about nondiscriminatory, plantwide sys-

tem and had taken every reasonable step to oppose seniority system which operated primarily to discriminate against its own members, and consequently was not liable under equal employment opportunity provisions of Civil Rights Act of 1964. Civil Rights Act of 1964, § 703(c), (c)(3) as amended 42 U.S.C.A. § 2000e–2(c), (c)(3).

10. Civil Rights 32(3)

Only parties previously identified as respondents in charges filed with Equal Employment Opportunity Commission were subject to subsequent liability under equal employment opportunity provisions of Civil Rights Act of 1964. Civil Rights Act of 1964, § 706(e) as amended 42 U.S.C.A. § 2000e–5(f)(1); 42 U.S.C.A. § 1981.

11. Civil Rights 34

Remedial purposes of equal employment opportunity provisions of Civil Rights Act of 1964 and paucity of legal training among those whom it is designed to protect require that court construe Equal Employment Opportunity Commission charge with utmost liberality. Civil Rights Act of 1964, § 706(e) as amended 42 U.S.C.A. § 2000e–5(f)(1); 42 U.S.C.A. § 1981.

12. Civil Rights 34

Court called upon to interpret charge before Equal Employment Opportunity Commission must bear in mind that fundamental purpose of charge is to trigger investigation by Commission, and necessity for equally broad interpretation of such charge at administrative and judicial levels stems from framework of Title VII and its goal of encouraging voluntary compliance through EEOC con-

[644 F.2d, at 1113-4]

ciliation. Civil Rights Act of 1964, § 706(e) as amended 42 U.S.C.A. § 2000e–5(f)(1); 42 U.S.C.A. § 1981.

13. Civil Rights 34

Reasonable limits of investigation potentially triggered by equal employment opportunity charge define not only substantive limits of subsequent Title VII action but also parties potentially liable in that action. Civil Rights Act of 1964, § 706(e) as [644 F.2d, at 1114] amended 42 U.S.C.A. § 2000e–5(f)(1); 42 U.S.C.A. § 1981.

14. Civil Rights 34

Where charges filed with Equal Employment Opportunity Commission failed to allege specific conduct clearly implicating international unions and Commission then quite reasonably omitted such unions in its investigative and conciliatory efforts and such unions thus failed even to receive informal notice that they had been named through Commission's administrative processes, no liability of such international unions under Title VII was to commence until 180 days prior to amended charges. Civil Rights Act of 1964, §§ 701 et seq., 703(h), 706(e) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e–2(h), 2000e–5(f)(1).

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N. Daniel Rogers, Donald H. Brockway, Jr., Birmingham, Ala., for Local Union 136.

Appeals from the United States District Court for the Northern District of Alabama.

Before FAY and HATCHETT, Circuit Judges, and GROOMS*, District Judge.

HATCHETT, Circuit Judge:

This appeal stems from a class action employment discrimination suit brought in 1972 under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e–2(e), and section 1981 of the 1866 Civil Rights Act, 42 U.S.C. § 1981, by black employees at the Bessemer, Alabama plant of U.S. Pipe and Foundry Company against their employer and their union representatives.[1] Due to pretrial settlements by the company and the electrical workers union,

*District Judge of the Northern District of Alabama, sitting by designation.

[1] This is a consolidated interlocutory appeal under 28 U.S.C. § 1292(b) and Federal Rule of Civil Procedure 54(b).

[644 F.2d, at 1114-5]

along with the agreement of all parties to a form of injunctive relief and the postponement of trial on the allocation of any back pay liability, this litigation now focuses upon the alleged illegality of the Bessemer seniority system and any resulting liability on the part of five unions. These unions include one industrial union, the United Steelworkers of America (Steelworkers), Local 2140, and four craft unions: The Brotherhood of Boilermakers, Blacksmiths, Forgers, and Helpers (Boilermakers), Local 583; the International Association of Machinists & Aerospace Workers (Machinists), Lodge 359; the International Molders & Allied Workers Union (Molders), Local 342; and the Pattern Makers League of North America (Patternmakers), Birmingham Association.

Appellants, the class of black employees, challenge the decision of the trial court that all but one aspect of the Bessemer seniority system was bona fide within the meaning of § 703(h) of Title VII and thus immunized from attack as a seniority system whose discriminatory effects were unintended. *See* 42 U.S.C. § 2000e–2(h). In addition, appellants challenge the court's procedural ruling that their charges filed with the EEOC in 1969 failed to name as respondents the international unions at the plant so as to permit any Title VII liability on [644 F.2d, at 1115] their part to commence 180 days prior to the filing of these charges. *See* 42 U.S.C. § 2000e–5(f)(1). One of the appellees, the Steelworkers, cross-appeals the refusal of the district court to excuse them from legal responsibility for the seniority system on the separate ground that this predominately black, industrial union actively opposed the largely white, craft unions in the establishment of a seniority system which worked to the disproportion-

ate disadvantage of the Steelworkers. *See* 42 U.S.C. § 2000e–2(c)(3).

We agree with two of these three challenges. We hold that the seniority system at Bessemer was not bona fide under § 703(h), that the Steelworkers bear no legal responsibility for this discriminatory seniority system, but that the Internationals were insufficiently identified by the 1969 EEOC charges to trigger their Title VII liability at that time.

FACTUAL BACKGROUND

U.S. Pipe Co. has a plant in Bessemer, Alabama which manufactures pipe for water and sewage projects. Production and maintenance workers at the plant have elected as their bargaining representatives various craft unions associated with the American Federation of Labor, as well as the non-craft steelworkers union affiliated with the Congress of Industrial Organizations. The district court found that the craft unions represent workers in the higher-skilled, better-paying jobs from which employees have the opportunity to move up in the company. The Steelworkers union represents workers in the least desirable, "dead-end" jobs. The craft unions are virtually all white. The Steelworkers union is predominately black.

The district court also found that the racial division between the unions stems partly from the company's historical practice of making job assignments on the basis of race. Discriminatory job assignments reflected the general racism which permeated all aspects of plant operations prior to 1965, from the segregation of employee facilities to the prevention of equal employment opportunities.

[644 F.2d, at 1115]

After passage of the 1964 Civil Rights Act, a major cause of continuing inequality was the seniority system in effect at the Bessemer plant until 1975. The overall seniority system was a composite of separate bargaining agreements negotiated by the company with each union. These agreements were similar, however, in providing that seniority would be measured on the basis of length of service in the applicable seniority unit, with seniority units generally defined by the bargaining units. With few exceptions, an employee who transferred to a new unit received no credit for service to the company in his prior unit. As recognized by the district court, this inhibition upon transfers disproportionately prejudiced those workers in the predominately black Steelworkers union who had been assigned to the least desirable, "dead-end" jobs. The appellants describe the discouraging effect of this system upon black advancement at the plant by pointing to the fate of one black employee who did transfer into a craft unit, losing twenty-six years of plant seniority, only to then lose his job completely as part of a reduction in plant employees which left on the job two white workers with just a few years of seniority in the craft unit. See our recent decisions in *U.S. v. Georgia Power Co.*, 634 F.2d 929 (5th Cir. 1981), and *Swint v. Pullman-Standard*, 624 F.2d 525 (5th Cir. 1980), for descriptions of the discriminatory operation of seniority systems with "lock-in" provisions such as those at the Bessemer plant.

In the early years of plant operations, various craft unions attempted with little success to represent employees in negotiating a collective bargaining agreement. In 1939, six international unions competed strenuously to represent some or all of the employees at the plant. The

[644 F.2d, at 1115-6]

Steelworkers associated with the CIO, sought to represent all production and maintenance employees at the plant. Four unions affiliated with the AFL sought to represent employees based primarily upon their craft: the Boilermakers, Machinists, Patternmakers, and Electrical Workers. One other AFL [644 F.2d, at 1116] union, the Molders, claimed not only those employees skilled in that craft, but all other production and maintenance employees except those claimed by the other AFL unions.

Elections supervised by the NLRB resolved this confrontation between the newly formed CIO, with its strategy of heterogeneous, plant-wide industrial organization, and the older AFL, with its traditional approach of organizing separate, homogeneous craft unions. The Boilermakers, Machinists, Patternmakers, and Electrical Workers prevailed over the Steelworkers among these largely white craft employees. The Steelworkers defeated the Molders among the remaining, predominately black group of employees. "That the elections had racial implications cannot be doubted," according to the district court.

Passage of the Taft-Hartley Act enabled the Molders to return to the Bessemer plant in 1949 to attempt "craft severance" from the industrial union represented by the Steelworkers. *See* 29 U.S.C. § 159(b)(2). Following an NLRB election among the all white employees with molder skills, the Molders union was certified as a separate craft unit.

In 1950, the unions formalized existing practices, without the sanction of the NLRB, by switching representation of thirteen positions from one unit to another. Ten jobs given to the Boilermakers and Machinists by the Steelworkers were staffed by white workers. Three posi-

[644 F.2d, at 1116]

tions given to the Steelworkers by the two craft unions were staffed by black workers. Though it continued to represent some white employees, the Steelworkers represented an even higher percentage of black workers as a result of this "swap." The Boilermakers and Machinists joined the Patternmakers and the Electrical Workers in having all white memberships.

The bargaining units at Bessemer retained this racially divided structure until the time appellants filed discrimination charges with the EEOC in 1969. In the period directly covered by this lawsuit, U.S. Pipe negotiated collective bargaining agreements with each of the unions in 1968, 1971, and 1974. Prior to this time the Steelworkers had repeatedly advocated plant-wide seniority. Armed in 1968 with the recently enacted Civil Rights Act, the Steelworkers proposed plant-wide seniority on the first day of negotiations. The company expressed a willingness to make the requested changes, but noted the need for the approval of the other unions. The craft unions strongly disapproved of any change, and the "lock-in" provisions remained intact.

In 1971, the company initiated the proposal of plant-wide seniority. The Steelworkers met privately with the other unions several times in an effort to gain their agreement to such a system. Again the craft unions prevented any change.

In 1974, the Steelworkers met with the craft unions in advance of their separate negotiations with the company in order to advocate plant-wide seniority. The craft unions were intransigent. The Steelworkers then agreed to a united union proposal to the company for plant-wide seniority qualified by a "unit preference" scheme which

gave unit members priority consideration for job vacancies. While the Steelworkers and the company continued to express their preference for a complete plant-wide seniority system, both agreed to the compromise proposal.

THE DISTRICT COURT DECISION

[1, 2] The district court upheld the validity of the seniority system except for the 1950 "swap" of positions between the Steelworkers and the Boilermakers and Machinists. The court correctly recognized that in order for a seniority system to be bona fide under § 703(h) of Title VII, it must not have been created or maintained with the intention to discriminate. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). The district court properly looked to the four factors extracted by us from the Supreme Court's opinion in *Teamsters*, and set forth in *James v. Stockham Valves & Fittings Co.*, 559 F.2d 310 (5th Cir. 1977), *cert. denied*, 434 U.S. 1034, 98 S.Ct. 767, 54 [644 F.2d, at 1117] L.Ed.2d 781 (1978), to assist in determining whether a particular seniority system stems from nondiscriminatory motivations:

(1) whether the seniority system operates to discourage all employees equally from transferring between seniority units;

(2) whether the seniority units are in the same or separate bargaining units (if the latter, whether that structure is rational and in conformance with industry practice);

(3) whether the seniority system had its genesis in racial discrimination; and

(4) whether the system was negotiated and has been

[644 F.2d, at 1117]

maintained free from any illegal purpose.

James, 559 F.2d at 352.

The district court found that one of the *James* factors weighed in favor of appellants: The seniority system had its genesis in racial discrimination. Specifically, the court found that racial considerations played a major role in the elections which produced the original bargaining and seniority units, and in the 1950 "swap" of employee positions between several units.

The district court ruled, however, that none of the other three *James* factors suggested an intent to discriminate through the Bessemer seniority system. Regarding the equality with which the system operated upon all employees, the court noted that the "lock-in" provisions were neutral on their face and as applied. The court acknowledged that "a much larger percentage of blacks than whites would have reason to desire transfer but for the loss of seniority under the rules," and that "the seniority system has been shown to have a discriminatory impact upon black employees." The court believed these facts to be irrelevant to the determination of any racially discriminatory intent.

The court also found general rationality in the Bessemer bargaining structure, and thus weighed this factor against a finding of discriminatory purpose. Though fraught with racial overtones, the original configuration of the units was deemed rational when viewed in light of the divisions in the labor movement at the time of the original elections. The court placed significance upon the fact that "notwithstanding discrimination against blacks within their own structures, the Boilermakers and Molders were nevertheless seeking to represent black employ-

ees. . . ." The court viewed the fact that the Molders later sought "craft severance" only among the all white employees in skilled positions, to the exclusion of their all black helpers, as fully justified by the NLRB practice of permitting such special elections only among skilled employees. The court recognized that the 1950 "swap" of jobs between unions was neither rational nor in conformity with industry practice. Yet the court treated this final change in the Bessemer bargaining structure as nothing more than an isolated incident which in no way implicated the overall seniority system.

The district court ruled that the final *James* factor, whether the seniority system was negotiated and maintained free from illegal purpose, again weighed in favor of the unions, with the exception of the craft unions involved in the 1950 "swap." The court inferred that the "lock-in" seniority provisions negotiated by all the unions, including the largely black Steelworkers union, reflected non-racial considerations. Craft union maintenance of this system was deemed an effort to prevent competition from other white unions rather than an effort to block encroachment by black workers. The court concluded that racial considerations played a role only in the 1968, 1971, and 1974 negotiations, and then only in the positive context of proposals to remove discriminatory practices.

On balance, the court held that the racially discriminatory genesis of the system provided insufficient evidence of an intent to discriminate through the creation and maintenance of the seniority system. Finding the seniority system bona fide under section 703, the court released all unions from liability under Title VII, with the exception of the Boilermakers and Machinists, whose

[644 F.2d, at 1117-8]

liability was limited to the 1950 "swap." The court released the Steelworkers from liability for their part in this exchange because it [644 F.2d, at 1118] found that they acted not out of racial animus, but instead out of a desire to offer representation to black employees in the Boilermakers and Machinists unions who felt discriminated against by these unions.

While the district court thus released the Steelworkers from liability, it also ruled that if it had erred in holding the seniority system bona fide, then the Steelworkers must share in union responsibility for that system. The court relied upon a belief that the company, rather than the Steelworkers, acted as the principal advocates of plant-wide seniority. It assumed that the Steelworkers fully supported the 1974 joint union proposal of a "unit preference" restriction upon a plant-wide seniority system.

Finally, the district court held that appellants' 1969 EEOC charges failed to name the International Unions as respondents so as to trigger their liability at that time in the subsequent Title VII suit. The court based this conclusion upon the failure of these charges to explicitly name the Internationals.

We must determine whether the seniority system was bona fide; whether the Steelworkers are liable for that system; and whether the 1969 EEOC charges sufficiently identified the Internationals as respondents.

THE ILLEGALITY OF THE SENIORITY SYSTEM

[3] Section 703(h) of Title VII exempts certain seniority systems from the reach of the Civil Rights Act of 1964:

Notwithstanding any other provision of this Title, it

> shall not be an unlawful employment practice . . . to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system . . . provided that such differences are not the result of an intention to discriminate because of race . . . .

42 U.S.C. § 2000e–2(h). We have held that the immunity created by section 703(h) extends not only to Title VII actions, but also bars section 1981 claims. *Pettway v. American Cast Iron Pipe Co.*, 576 F.2d 1157 (5th Cir. 1978), *cert. denied*, 439 U.S. 1115, 99 S.Ct. 1020, 59 L.Ed. 2d 74 (1979). Yet the immunity provided by section 703(h) extends to seniority systems with a disparate racial impact only when "differences in treatment [are] not the result of an intention to discriminate because of race." *Teamsters*, 431 U.S. at 353, 97 S.Ct. at 1863; *accord*, *Southbridge Plastics Division v. Local 759*, 565 F.2d 913 (5th Cir. 1978).

[4] To assess the purposes underlying the Bessemer seniority system, we turn to the four factors identified in *James v. Stockham Valves*. The district court correctly found that the Bessemer seniority system had its genesis in purposeful racial discrimination. The record amply supports this conclusion by showing that the system arose in an era of overt racial discrimination at U.S. Pipe, when blacks were assigned to "dead-end" jobs, bargaining seniority units were defined by racial considerations, and seniority provisions allowed transfer to better units only through commission of "seniority suicide." See our refusal to extend section 703(h) immunity to similar seniority systems in *Swint v. Pullman-Standard*, 624 F.2d 525 (5th Cir. 1980), and *United States v. Georgia Power Co.*, 634 F.2d 929 (5th Cir. 1981). We need not decide

[644 F.2d, at 1118-9]

whether the court's specific finding of the racial genesis of the Bessemer system is tantamount to a finding of "purposeful discrimination in connection with the establishment . . . of the system," *James*, 559 F.2d at 351, because here, as in *Swint* and *Georgia Power*, we find evidence of discriminatory intent under each of the *James* factors and the totality of all circumstances.

The district court clearly erred in concluding that the Bessemer seniority system was negotiated and maintained free of discriminatory purposes. The record before us amply shows that we again face a situation in which

> the seniority system negotiated through the collective bargaining process tracked and reinforced the purposefully segregated job classification scheme maintained by the company and the conclusion is inescapable that the seniority system it- [644 F.2d, at 1119] self shared in that same unlawful purpose. The seniority system under the collective bargaining agreement was but part and parcel of the total package of purposeful discrimination at [the company].

Georgia Power, 634 F.2d at 936.

Even if the district court correctly held that the racially-charged union elections conformed to industry practice, the 1950 racial "swap" of positions, in defiance of all reason, reinforces the conclusion that the Bessemer seniority system was created and maintained unlawfully. We reject the district court's attempt to isolate this aspect of the seniority system so as to restrict union liability to that incident. We instead view this racial adjustment as an integral piece of evidence which manifested underlying racial purposes. The significance of this final alteration of the bargaining structure cannot be underestimated since it removed almost all of the black workers assigned by the NLRB to craft unions.

[5] The district court also erred in its consideration of the *James* factor which focuses upon the equality with which a seniority system operates. The disparate impact of the Bessemer seniority system on black employees is obvious and well documented by the record. The district court recognized this disparate impact but concluded that it was irrelevant. We have since held that disparate impact constitutes not only relevant evidence of discriminatory purpose, *Swint*, but can conclusively resolve the "equality" factor in favor of those who have suffered such discrimination. *See Georgia Power*. As for the district court's reliance upon the facial equality with which the Bessemer seniority system operated, we merely note that here again "facial equality . . . was but a mask for the gross inequality beneath." *Georgia Power*, 634 F.2d at 935.

[6] Other factors aside from those isolated by *James* may be considered in determining the purposes underlying a seniority system. *See Pettway v. American Cast Iron Pipe Co.*, 576 F.2d at 1192. One such factor in this case, a factor apparently ignored by the district court, is the overtly discriminatory policies of each of the craft unions at the time the seniority system was created and "corrected" to follow racial lines. At that time, for instance, the Machinists barred blacks from union membership, the Boilermakers relegated blacks to inferior "auxiliary" locals, the Molders segregated the few blacks in their Alabama locals, and the Patternmakers claimed that there were no "qualified niggers" in that state. The Supreme Court has held that a court may take judicial notice of the exclusion of black workers from craft unions on racial grounds, *United Steelworkers of America v. Weber*, 443 U.S. 193, n. 1, 99 S.Ct. 2721, n. 1, 61 L.Ed.2d 480

[644 F.2d, at 1119-20]

(1979), but the record before us provides ample evidence of the overtly discriminatory policies of the craft unions involved in this case. Little purpose would be served by detailing these discriminatory policies. Such policies, however, offer strong additional evidence of racial motivations underlying the seniority system defended by the craft unions in the face of mounting opposition by the company and the Steelworkers.

In summary, the totality of circumstances surrounding the creation and maintenance of the seniority system at the Bessemer plant again "leaves us with the definite and firm conviction that a mistake has been made. There can be no doubt, based upon the record in this case, about the existence of a discriminatory purpose." *Swint*, 624 F.2d at 533 (citations omitted). Our recent decisions in *Swint* and *Georgia Power*, overruling conclusions of nondiscriminatory intent, virtually compel condemnation of the Bessemer system because of the striking similarity between the "lock-in" seniority provisions and the comparable clarity of other evidence of discriminatory purpose. As in those cases, we find error in the failure of the district court (1) to consider the disparate impact of such systems, (2) to appreciate the integral importance of particular racial deviations from industry practice, (3) to focus upon additional factors, such as the avowedly racist policies of the craft unions, and (4) to recognize the cumulative effect of separate pieces of evi- [644 F.2d, at 1120] dence of racial motives, evidence which here compelled the specific finding that the seniority system had its "genesis in racial discrimination." We therefore hold that the Bessemer system cannot qualify for the immunity extended by section 703(h) of Title VII only to those se-

niority systems created and maintained without intention to discriminate. 42 U.S.C. § 2000e–2(h).

THE STEELWORKERS UNION

The district court refused to excuse the Steelworkers from liability for any violation of Title VII by the Bessemer seniority system. The court viewed the Steelworkers' efforts to institute plant-wide seniority as subsidiary to such efforts by the company. The court focused upon the Steelworkers' adoption of the 1974 joint union proposal for "unit preference" as evidence of its failure to support a true plant-wide seniority system. The Steelworkers cross-appeal this decision on the ground that they took every reasonable step to bring about plant-wide seniority. They argue that they settled upon the "unit preference" proposal only because it appeared to represent the best option available in light of craft union resistance to complete plant-wide seniority. Appellants support the court's decision by arguing that while the Steelworkers were not "passive" in opposing the discriminatory seniority system, their efforts to abolish it were "ineffectual." Appellants would have us direct the district court to take into consideration the Steelworkers' relatively commendable conduct when apportioning back pay liability among the unions. We refuse, however, to permit the Steelworkers union to suffer even the label of Title VII liability because the record before us clearly demonstrates that they met the legal requirement of taking every reasonable step to oppose a seniority system which operated primarily to discriminate against its own members.

We begin with established principles of law. Section 703(c)(3) of Title VII makes it unlawful for a union to

[644 F.2d, at 1120]

"cause or attempt to cause an employer to discriminate. . . ." 42 U.S.C. § 2000e–2(c)(3). We have recognized that under the Act "[l]abor organizations, as well as employers, have an affirmative duty to take corrective steps to prevent the perpetuation of past discrimination." *Myers v. Gilman Paper Co.*, 544 F.2d 837, 850 (5th Cir.), *modified in other respects on rehearing*, 556 F.2d 758, *cert. dismissed*, 434 U.S. 801, 98 S.Ct. 28, 54 L.Ed.2d 59 (1977) (citation omitted).

[7] The Supreme Court has cautioned against legally excusing a party involved in an employment practice which had been found to violate Title VII: "given a finding of unlawful discrimination, backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purpose of irradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination." *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 421, 95 S.Ct. 2362, 2373, 45 L.Ed.2d 280 (1975) (footnote omitted). One reason for caution in excusing a party involved in an unlawful employment practice stems from the congressional purpose of stimulating self-corrective action by employers and unions.

> It is the reasonably certain prospect of a backpay award that "provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history."

Albemarle, at 417–18, 95 S.Ct. at 2371–72 (quoting *United States v. N. L. Industries, Inc.*, 479 F.2d 354, 379 (8th Cir. 1973)).

[644 F.2d, at 1120-1]

[8] Whether a party involved in an established Title VII violation may be excused from liability therefore turns upon whether that party has proved to the full satisfaction of the courts that it has taken every reasonable step to bring employment practices into compliance with the law. In applying this test, we have recognized that even a union which signs a contract establishing an unlawful seniority system may suffer no liability if it actively opposed the adoption of this system. *See James v. Stockham Valves.*

[644 F.2d, at 1121]

This same test has caused us, in the face of different circumstances, to hold a union liable for a seniority system which resulted from agreements negotiated by another union. In *Carey v. Greyhound Bus Co., Inc.*, 500 F.2d 1372 (5th Cir. 1974), for example, we held the conduct of a union to be violative of Title VII though "disguised by a thin veneer of racial neutrality." This apparent neutrality stemmed from the fact that the union could not negotiate directly with the bus company about the seniority of its members who would transfer to another unit represented by a different union. We discerned that the union had not even made a "concerned attempt" to rectify discriminatory practices since it had not "actively sought" plant seniority. We concluded that the "ineffectual passivism" of the union facilitated the continuance of racial discrimination. We therefore held that this union shared in overall responsibility for the illegal seniority system. In *Myers v. Gilman Paper Co.*, we likewise held a non-signatory union liable for seniority provisions in another union's bargaining agreement on the ground that "[i]t is settled that Title VII required [the non-signatory union] at some point to take 'the affirmative step to initiate negotiations in an effort to salvage

[644 F.2d, at 1121]

for its own ex-members the seniority that they would inevitably and foreseeably lose [upon transfer].' " 544 F.2d at 852 (*quoting Carey*, 500 F.2d at 1379).

[9] After carefully examining the record, we conclude that the Steelworkers diligently sought to bring about a nondiscriminatory, plant-wide system at Bessemer. We reach this conclusion based on the totality of circumstances in this case. In particular, we note the facts stated below.

Appellants do not allege any discriminatory practices by the Steelworkers. The district court found that the evidence in this case supported the general observation that the Steelworkers constituted "one of the few institutions in the area which did not function in fact to foster and maintain segregation." The United Steelworkers of America has a well-known history of striving to achieve racial equality and integration in the labor movement.

The Steelworkers local at Bessemer was consistently represented by black officials who had every reason to oppose a seniority system which disproportionately prejudiced its predominately black membership. These officials appear to have taken every reasonable step to bring about plant-wide seniority, from initiation of this proposal on the first day of the 1968 negotiations with the company, to private lobbying efforts in 1971 and 1974 with the craft unions. Their acceptance of the "union preference" system in 1974 clearly represented a reasonable decision to gain ome improvement, rather than suffering complete defeat at the hands of the craft unions.

In view of these and other circumstances evidenced by the record, we absolve the Steelworkers from any responsibility under Title VII for the discriminatory seniority

system at the Bessemer plant. In so holding, we advance the congressional purpose of stimulating self-corrective union action against illegal employment practices. The penalty of back pay liability for those unions which passively acquiesce in discriminatory practices is matched with judicial recognition of those unions which have opposed such violations of the law through every means in their power.

THE LIABILITY OF THE INTERNATIONAL UNIONS

The precise procedural issue before us is whether the original charges filed by appellants with the EEOC identified the Internationals as respondents within the meaning of that portion of Title VII which authorizes legal action only against parties "named" in the administrative charge. 42 U.S.C. § 2000e–5(f)(1).[2] The Internationals [644 F.2d, at 1122] successfully argued in the trial court that they had not been named. Appellants claim on appeal that the Internationals were sufficiently identified in the charges to fulfill the purposes of the Act. We disagree. The significance of this controversy and our conclusion becomes clear, however, only in the context of the procedural history of this case.

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[2] 29 C.F.R. § 1601.12(h) provides:

> A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations therein. Such amendment . . .will relate back to the date the charge was first received.

Originally adopted in 1965 and numbered § 1601.11(9), this regulation was amended in 1979, without altering its substantive content to read as set forth above.

[644 F.2d, at 1122]

Appellants first filed charges with the Commission in 1969. The district court ruled that these charges failed to identify the Internationals as respondents, though they indisputably named the Locals. In 1972, appellants brought this legal action under both Title VII and section 1981, naming the Internationals along with the Locals as defendants. Appellants then amended their original EEOC charges in 1973 to explicitly name the Internationals as respondents.

Commission regulations mandate that amended charges which merely clarify or amplify allegations in a prior charge shall "relate back" to the effective date of the earlier charge.[3] *See Weeks v. Southern Bell Telephone & Telegraph Co.*, 408 F.2d 228 (5th Cir. 1969). The district court ruled, however, that it would be "improper" in this case to treat the amendments as relating back to the date of the original charges. The court viewed the amended charges as an attempted "addition" of the Internationals as respondents, rather than as a mere clarification of previously identified parties.[4]

[3] 42 U.S.C. 2000e-5(f)(1) provides that upon compliance with certain procedures fully met by appellants "a civil action may be brought against the respondent named in the charge" previously filed with the EEOC.

[4] The district court announced and explained its ruling as follows:

> It is clear from the reading of the amended EEOC charges dated August 2, 1973, which were prepared with the assistance of counsel experienced in discrimination matters, that the international unions were being *added* as respondents. The EEOC's earlier findings and right-to-sue letters had, consistently with the wording of the original charges, treated only the local unions and company as respondents prior to that date. While the amended EEOC charges, even though filed ten months after the institution of the lawsuit, are certainly to be recognized as effective against the internationals when filed, it would be improper to treat them as "relating back" for limitations' purposes to the earlier charges.

The district court therefore held that the potential liability of the Internationals commenced in 1971 under section 1981.

[10] Only parties previously identified as respondents in charges filed with the EEOC are subject to subsequent liability under Title VII. 42 U.S.C. § 2000e–5(f)(1). All parties to this suit are in agreement that Title VII limits the liability of such respondents to matters occurring within 180 days of the filing of administrative charges. There is also no dispute that the limitations period in this case for liability under section 1981 extends for one year, with the one year period measured from the commencement of judicial proceedings.

The district court applied these limitations periods to the Internationals in a manner consistent with its conclusion that they were unnamed in the original EEOC charges. The court ruled that the period of potential liability of the Internationals under Title VII began only in 1973, i. e., 180 days prior to their "addition" as respondents in the amended charges. The court extended their possible liability back to 1971 under section 1981, i. e., one year before the filing of the suit in 1972. The court refused to treat the Internationals in the same manner as the Locals when ruling that any Title VII liability on the part of the Locals commenced 180 days prior to the original 1969 charges.

Appellants challenge this restriction upon the potential liability of the Internationals. They argue that the district court erred in holding that the 1969 EEOC charges failed to identify the Internationals as respondents. They insist that the 1973 amended charges merely rendered explicit the clear implication of the Internationals as respon- [644 F.2d, at 1123] dents in the original charges. Appellants therefore contend that the district court committed reversible error in refusing to relate the explicit naming

[644 F.2d, at 1123]

of the Internationals in the amended charges back to the date of the original charges.

[11, 12] We begin with certain well-established principles. The remedial purposes of Title VII, and the paucity of legal training among those whom it is designed to protect, require that a court construe an EEOC charge with the utmost liberality. *E. g., Tillman v. City of Boaz*, 548 F.2d 592 (5th Cir. 1977) (liberality required in interpreting the parties named); *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455 (5th Cir. 1970) (liberality required in interpreting the discrimination alleged). "For a lay-initiated proceeding it would be out of keeping with the Act to import commonlaw pleading necessities to this 'charge,' or in turn to hog-tie the subsequent lawsuit to any such concepts." *Jenkins v. United Gas Corp.*, 400 F.2d 28, 30 n.3 (5th Cir. 1968). A court called upon to interpret such a charge must bear in mind that a fundamental purpose of the charge is to trigger an investigation by the EEOC. "All that is required is that [a charge] give sufficient information to enable EEOC to see what the grievance is about." *Id.* The necessity for equally broad interpretation of such a charge at the administrative and judicial levels stems from the framework of Title VII and its goal of encouraging voluntary compliance through EEOC conciliation.

> The Commission, which must operate on the basis of the administrative charge, rarely drawn by an attorney, must therefore view the charge in its broadest reasonable sense in order to effectively attempt to eliminate, by the administrative process, the discriminatory practices and policies which it finds. . . . Lacking enforcement powers, the Commission's disputes resolution machinery could not succeed if the federal courts were

> not in a position to review the complaint filed in a section 706 proceeding as broadly as the Commission views the charge.

Sanchez, 431 F.2d at 467 (quoting the amicus brief of the EEOC); *see Tillman v. City of Boaz*, 548 F.2d 592 (5th Cir. 1977) (deference should be given to EEOC interpretation of a charge). Such policy considerations have caused this court to adopt a rule of reason which permits the scope of a Title VII suit to extend as far as, but no further than, the scope of the EEOC investigation which could reasonably grow out of the administrative charge.

> The logic of this rule is inherent in the statutory scheme of Title VII. A charge of discrimination is *not* filed as a preliminary to a lawsuit. On the contrary, the purpose of a charge of discrimination is to trigger the investigatory and conciliatory procedures of the EEOC. . . . Only if the EEOC fails to achieve voluntary compliance will the matter ever become the subject of court action. Thus it is obvious that the civil action is much more intimately related to the EEOC investigation than the words of the charge which originally triggered the investigation.

Sanchez, 431 F.2d at 466.

[13] The reasonable limits of an investigation potentially triggered by an EEOC charge define not only the substantive limits of a subsequent Title VII action, but also the parties potentially liable in that action. *See, e. g., Tillman v. City of Boaz*, 548 F.2d 592 (5th Cir. 1977); *Kaplan v. International Alliance of Theatrical and Stage Employees*, 525 F.2d 1354 (9th Cir. 1975). In *Kaplan*, the Ninth Circuit focused upon a factual statement in an EEOC charge which explicitly named only a local union, but which necessarily implicated an international union in the alleged discrimination. The court reasoned that the

[644 F.2d, at 1123-4]

fact that a contract specifically complained of had clearly been negotiated by the International sufficed to apprise the EEOC in "general terms" of the possible complicity of the International. The *Kaplan* court held that such general notice to the EEOC was sufficient to permit the International to be named as a defendant in a subsequent suit under Title VII. In so holding, the court relied primarily upon well-established rulings of this court.

[644 F.2d, at 1124]

Our more recent decision in *Tillman v. Boaz* again looked to the factual allegations of an EEOC charge, and the scope of ensuing EEOC efforts, in liberally interpreting the parties named in the charge. In *Tillman*, we held that the City of Boaz, Alabama, was liable under Title VII although it was not specifically named as a respondent, because a letter to the EEOC, specifically incorporated by reference in the EEOC charges, stated that "I would like to file a claim against the City of Boaz . . . ." and the charges themselves listed the City of Boaz as the employer who discriminated against the plaintiff. Pursuant to that letter and the accompanying charges, the EEOC investigated the City as well as its mayor, the named respondent. In that situation, we had no difficulty concluding that both the EEOC and the City had sufficient notice that the City was charged to justify imposing liability on the City.

[14] Applying these precedents and principles favoring liberality to the facts now before us, we must nevertheless conclude that the Internationals were insufficiently implicated in the discrimination alleged in appellants' original charges to have reasonably triggered EEOC investigation of the Internationals. These charges failed to allege specific conduct which clearly implicated the Inter-

nationals. Quite reasonably, the EEOC then omitted the Internationals in its investigative and conciliatory efforts. The Internationals thus failed even to receive informal notice that they had been named through the Commission's administrative processes. Apparently recognizing that they had made a serious, substantive mistake—not a mere technical error of pleading—appellants amended their original EEOC charges to explicitly name the Internationals. Without holding appellants to the same level of draftsmanship as trained attorneys, we are constrained by the facts in this case to uphold the decision of the district court that no liability of the Internationals under Title VII shall commence until 180 days prior to these 1973 amended charges.

CONCLUSION

Because the record clearly demonstrates racially discriminatory purposes underlying the creation and maintenance of the Bessemer seniority system, we hold that it is not bona fide within the meaning of 42 U.S.C. § 2000e–2(h). Since the Steelworkers union took every reasonable step to eradicate this discriminatory system, we exclude them from any liability for that system under 42 U.S.C. § 2000e–2(c)(3). Finally, the fact that the allegations in appellants' 1969 EEOC charges did not clearly implicate the international unions causes us to hold that these charges did not trigger their liability at that time under 42 U.S.C. § 2000e–5(f)(1).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

APPENDIX B

22 FEP Cases 1695

TERRELL v. U.S. PIPE & FOUNDRY CO.

U.S. District Court,
Northern District of Alabama

TERRELL, et al. v. UNITED STATES PIPE AND FOUNDRY COMPANY, et al., No. CA 72-P-0887-S, October 16, 1979

CIVIL RIGHTS ACTS OF 1866 AND 1964

Unit seniority system 108.3315

Unit seniority system that first precluded and then limited use of plant seniority upon transfer to job represented by different union is bona fide under Title VII except for its coverage of certain helper jobs that were transferred in 1950 between seniority units, where this transfer, which separated helper jobs with black incumbents from their related skilled position and joined those with white incumbents to their related skilled position, has not been shown to be in accord with common industry practice, and it was carried out to increase seniority security for certain whites and to increase promotional opportunities of some of them: although seniority system was instituted at time of widespread racial discrimination, it was negotiated, and has been maintained, free of any purpose of racial discrimination, except for 1950 incident.

Action under 42 U.S.C. §1981 and Title VII of Civil Rights Act of 1964 by employees against employer and unions. Seniority system found bona fide except for one aspect.

[22 FEP Cases, at 1695-6]

See also 6 FEP Cases 1027.

Demetrius C. Newton, Birmingham, Ala., Joseph P. Hudson, Gulfport, Miss., and Barry L. Goldstein, Washington, D.C., for plaintiffs.

James P. Alexander, Birmingham, Ala., for defendant employer.

[22 FEP Cases, at 1696]

N. Daniel Rogers, Birmingham, Ala., for defendant IBEW Local 136.

George C. Longshore, Birmingham, Ala., for other union defendants.

Full Text of Opinion

POINTER, District Judge:—For decision by the court in this employment discrimination case is the issue whether certain union defendants are liable to the plaintiffs and the plaintiff class for back pay, costs, and attorneys fees. Liability is premised upon these defendants' roles in establishing and maintaining seniority systems at U.S. Pipe's plant in Bessemer, Alabama, which allegedly discriminated against black employees contrary to 42 U.S.C.A. §§1981 and 2000e-2(c). The claim is not that the seniority systems in question were applied in a discriminatory non-uniform manner. Rather, the claim is that the seniority systems, by according seniority privileges on the basis of seniority units, had a discriminatory effect upon blacks by virtue of the company's having made racially discriminatory assignments to the different seniority units. Of critical importance are the defendants' contentions that the seniority systems were bona fide, neither instituted nor maintained because of any intent to discriminate on the basis of race or color, and that they are therefore immunized from liability under 42 U.S.C.A.

§2000e-2(h).[1]

I. History of the Litigation

A synopsis of the history of the litigation is helpful in understanding the context in which the court is confronted with this seemingly narrow issue.

The complaint, filed as a class action on October 4, 1972, by seven black workers, alleged a broad pattern of racially discriminatory practices at the Bessemer plant of United States Pipe and Foundry Company. Named as defendants were the company, six local unions,[2] and the six international labor organizations with which they were affiliated. Summary judgment was ultimately granted in favor of one international union (IBEW) but denied as to two others (Boilermakers and IAM); and, after a severed trial under F.R.C.P. 42(b), it was determined that the Boilersmakers and IAM internationals had potential liability in the case. See 7 EPD §9055, 6 FEP Cases 1027 (N.D. Ala. 1973).

The case against the remaining twelve defendants proceeded through normal, if prolonged, pretrial prepara-

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[1] In Pettway v. American Cast Iron Pipe Co., 576 F.2d 1157, 17 FEP Cases 1712 (CA5 1978), the court ruled that immunity under 42 U.S.C.A. §2000e-2(h) would bar not only Title VII claims, but also §1981 claims. See footnote 37, 576 F.2d at 1191-92, 17 FEP Cases at 1736.

[2] Local 2140, United Steelworkers of America ("Steelworkers"); Local 342, International Molders and Allied Workers Union ("Molders"); Patternmakers Association of Birmingham ("Patternmakers"); Lodge 359, International Association Of Machinists and Aerospace Workers ("IAM"); Local 583, Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers ("Boilermakers"); and Local 136, International Brotherhood of Electrical Workers ("IBEW").

[22 FEP Cases, at 1696]

tions. Three pretrial conferences were held, resulting in refinement of the contested issues. The case was allowed to be maintained as a class action, with the class (as last defined) being "all black persons who have been at any time after March 24, 1969 (or who may hereafter be) employed as production and maintenance employees at the Bessemer, Alabama, plant of U.S. Pipe and Foundry Company." Extensive discovery was undertaken—involving some 20 sets of requests for admissions, 25 sets of interrogatories, 10 sets of requests for production of documents, and 15 depositions—much of which being prompted by the intervening decision in International Brotherhood of Teamsters v. United States, 431 U.S. 324, 14 FEP Cases 1514 (1977). Modifications to the seniority systems as a result of new collective bargaining agreements in January 1975 and November 1977 had their own effect upon the litigation, as did the fact that the Molders and Patternmakers unions had ceased to represent workers at the plant.

Shortly before the scheduled trial on liability issues—the amount of back pay, if any, was to be determined at a later trial as necessary—the court was advised that agreements to settle had been reached which, if approved, would resolve most of the issues in the case. All parties to the litigation had agreed to modifications in the seniority system. The company had agreed to pay $510,000 in back pay for distribution to the plaintiff class and $10,000 towards litigation expenses of plaintiffs' counsel, acknowledging also an obligation to pay plaintiffs' attorneys fees in an amount which, if not resolved by agreement, would be determined by the court. The plaintiffs agreed that they would not seek a back pay award against the Steelworkers unions and would not be entitled to a back pay award against the IBEW.

[22 FEP Cases, at 1696-7]

In agreeing to the proposed settlements as a compromise of the issues to be resolved thereby, the plaintiffs did not admit that such relief would be all to which they would be entitled in the event of a trial, nor did the defendants [22 FEP Cases, at 1697] admit that they had violated the employment discrimination laws. Even if the settlement were to be approved—which would involve a hearing after notice to the class members—there would remain certain unresolved issues for trial, principally the plaintiffs' claim that the Boilermakers, Patternmakers, Molders, and IAM unions were liable for back pay, costs, and attorneys fees. Moreover, the plaintiffs reserved the right to seek an award of costs and attorneys fees against the Steelworkers and IBEW unions and, while admitting that their evidence would not support a back pay award against the Steelworkers unions, did not waive any entitlement to such an award if liability therefor were to be established by evidence presented at trial by the other unions.

Due to the readiness of the parties, the court determined to go forward with the trial of the liability issues that would remain were the settlements to be approved, with a hearing on the settlements to be scheduled at a later date. (It was, however, first determined by the court that the terms of the proposed settlements were within the range of reasonableness such that a hearing should be held to consider any objections to them.) It was recognized that, should the settlements ultimately be disapproved, the company would not be bound by the findings made by the court in connection with the claims against the unions, but would be given later the opportunity to offer further evidence relevant to the claims made against it.

[22 FEP Cases, at 1697]

With the issues thus narrowed to the plaintiffs' claims of monetary liability on the part of the unions, trial was completed in three days—a period which belies the quantity of evidence (frequently presented by summaries and data compilations) covering some forty years of industrial relations at U.S. Pipe's Bessemer plant. After the trial it was decided that a hearing on the proposed settlements should be deferred until entry of a ruling on the monetary claims against the unions, thereby enabling the class members to be better informed as to the consequences of the proposed settlements.

As indicated, the evidence covers a span of several decades. This evidence has particular significance on the question of whether the company made racially discriminatory assignments of employees to the different seniority units and on the question as to the intent of the unions in agreeing to (if not advocating) seniority systems based on seniority units. It is, however, appropriate at the outset to note that the claims of discrimination on which liability of the unions in this action may be premised are far more limited in duration under applicable periods of limitation. Claims under Title VII may be based on employment practices which preceded the filing of an EEOC charge naming such party by 180 days (plus ending holidays); those under 42 U.S.C. 1981 may be based on practices which preceded the filing of the lawsuit by one year. Upon a consideration of the filing of charges with the EEOC, which were introduced into evidence, and of the filing of the complaint in this case, of which the court takes judicial notice, it appears that the following are the earliest dates on which liability can be premised: December 23, 1968, as to Molders' Local 342; January 13, 1969, as to IAM Lodge 359; January 26, 1969, as to Boilermakers

Local 583 and as to the Patternmakers Association of Birmingham; and October 4, 1971, as to the four international labor organizations. Without merit are the plaintiffs' attempts to establish longer periods of limitations against the international unions on the basis of amended Title VII charges [3] or on the basis of pretrial waiver.[4]

One final procedural matter should be covered in this discussion of the history of the litigation. After the plaintiffs and the company had agreed to a settlement in mid-1979—almost seven years after the lawsuit had been instituted—several of the union defendants filed a cross-claim (mislabelled a counterclaim) against the company, seeking contribution or indemnification should the unions

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[3] It is clear from the reading of the amended EEOC charges dated August 2, 1973, which were prepared with the assistance of counsel experienced in discrimination matters, that the international unions were being *added* as respondents. The EEOC's earlier findings and right-to-sue letters had, consistently with the wording of the original charges, treated only the local unions and company as respondents prior to that date. While the amended EEOC charges, even though filed ten months after the institution of the lawsuit, are certainly to be recognized as effective against the internationals when filed, it would be improper to treat them as "relating back" for limitations' purposes to the earlier charges.

[4] Leaving aside the legal dispute whether identification of respondents in EEOC charges is truly jurisdictional or not, plaintiffs' claim of a waiver by the internationals fails to take account of the fact that EEOC charges were filed (albeit not until August 1973) against the internationals. The potential problem arising from failure to name the internationals in the original charges was noted in open court back in October 1973 as one which would involve further study. See 7 EPD §9055, 6 FEP Cases 1027. The international unions have not waived their rights to contest the periods covered by the EEOC charges.

[22 FEP Cases, at 1697-8]

be held monetarily liable to the plaintiffs. This belated claim is due to be rejected. First, it is under the circumstances untimely and in the exercise of discretion should not at this late stage be permitted. Cf. Zenith Radio Corp. v. Hazel- [22 FEP Cases, at 1698] tine Research Inc. 401 U.S. 321 (1971). Second, if allowed, it would be without merit. Contribution among joint tortfeasors is not, at least in favor of one charged with an intentional tort, allowed—and in the context of this particular case involving potential immunity from liability by virtue of an allegedly bona fide seniority system the unions would not be held liable to the plaintiffs unless they were found to have acted with racially discriminatory intent in establishing or maintaining the seniority system. Moreover, as a factual matter based on the evidence in this case, it is clear that, to whatever extent the seniority systems negotiated in the 1968, 1971, 1975, and 1977 periods may have perpetuated the effects of prior discrimination, the deficiencies would be primarily chargeable against the unions, not the company.

II. The Seniority System and Its Effect Upon Blacks.

Analysis of the seniority system during the period under direct attack by the plaintiffs involves a study of twenty collective bargaining agreements entered by the company—with six unions in October 1968 and in November 1971, and with four unions in January 1975 and in November 1977.

The system in effect from November 1, 1968, through October 31, 1974, was essentially one based on seniority

units.[5] The proximately 135 job titles as to which the Steelworkers had jurisdiction were divided among twenty-four such seniority units; e.g., Cement Lining, deLavaud Cores, Machine Shop, Melting, Shipping. The some 23 job titles as to which the IAM had jurisdiction were divided among five such units; i.e. Blacksmith Shop, Machine Shop, deLavaud Pipe Cutters and Drillers, Mechanical Maintenance-Welding, and Physical Testing Laboratories. The four positions as to which the Pattern-makers had jurisdiction were in a single seniority unit. The other three unions, each of which represented but a single craft position (journeyman and apprentice), were apparently treated as separate seniority units.[6]

Seniority for purposes of promotion, layoffs, and recalls was based, with few exceptions, upon continuous service within a particular seniority unit. The Steelworkers and IAM contracts did contain provisions which permitted an employee accepting transfer to another seniority unit on a reduction in force to retain seniority in the old unit (while beginning to build seniority in the new unit) until offered recall back to the old unit, at which time an election between the two would have to be made. The Steelworkers 1968 and 1971 contracts also provided for bidding on vacancies in other Steelworkers' seniority units, and their 1971 contract provided for plant-wide service to be used on reductions in force to roll junior employees on the some 35 lowest-paid Steelworker positions. None of the

[5] The description in the contracts of the seniority units as "departments" is somewhat misleading, for it is clear that the units were more numerous than the operating departments of the company.

[6] While the Boilermaker and IBEW contracts described seniority as being plantwide, the special language relating to seniority of apprentices indicates that seniority was being measured on the basis of service in positions represented by such unions.

[22 FEP Cases, at 1698]

contracts provided for transfers between seniority units represented by different unions, and it is clear from the evidence that, when that did occur, the employee was treated in the new unit as a new employee for seniority purposes.

The January 1975[7] agreements between the company and the four[8] remaining unions adopted a form of plant-wide seniority. In each contract seniority was to be measured by plant continuous service and vacancies were to be posted for bids on a plant-wide basis. Use of this seniority, however, on reductions in force was basically restricted to positions represented by the same union, with bumping across union lines allowed only at the lowest paid positions, and journeymen were protected against displacement by other than journeymen of the same craft. Moreover, a union preference rule was adopted for promotions, requiring that vacancies be "offered first" to members of the union having jurisdiction over the position. In the 1977 contracts this promotional preference was reworded as "considered first", and restrictions on the frequency of transfers were imposed.

Seniority systems such as in effect at U.S. Pipe's Bessemer plant since 1968—allowing for only limited use of plant service in the event of transfers between seniority units and containing no "rate retention" provisions—have long been recognized in this and other circuits as

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[7] A gap between collective bargaining agreements of almost three months was occasioned by a strike at the expiration of the 1971-74 contract.

[8] In the latter half of 1972 the General Foundry and the Pattern Shop were closed. Thereafter the Patternmakers and Molders unions ceased to represent any employees at the Bessemer plant.

[22 FEP Cases, at 1698-9]

having a discriminatory effect in industrial settings where blacks were discriminated against in initial job assignments. This principle has not been undermined by International Brother- [22 FEP Cases, at 1699] hood of Teamsters v. United States, 431 U.S. 324, 14 FEP Cases 1514 (1977). In Teamsters, the Supreme Court did not hold that there would be no discriminatory impact from such inhibitions upon transfers, but rather held that, upon due showing of the bona fides and non-discriminatory purposes of such a seniority sytem, immunity from Title VII liability would be provided under 42 U.S.C.A. §2000e2(h). So, in this case—leaving aside for the moment whether the standards of 2000e2(h) have been satisfied—it is clear that a prima facie showing of liability under Title VII has been made if there has been discrimination in initial job assignments among the various seniority units. See, e.g., James v. Stockham Valves & Fittings Co., 559 F.2d 310, 15 FEP Cases 827 (CA5 1977), cert. denied, 434 U.S. 1034, 16 FEP Cases 501 (1978).

The evidence presented at this trial[9] establishes a history of racial discrimination by the company in making initial job assignments. Not only were there virtually no assignments of blacks to positions represented by the craft unions, but even in assignments to the various non-craft positions represented by the predominantly black Steelworkers a color-conscious pattern is obvious. There were at this plant—as has been found to be true in many other industrial plants in the area—jobs and seniority

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[9] As earlier indicated, this and related findings are not binding upon the company, which—if the proposed settlement be rejected—would be given the opportunity to present other evidence for the court's consideration.

[22 FEP Cases, at 1699]

units that were for practical purposes reserved either for whites or for blacks. As late as 1971, some time after the company had made changes in its assignment policies, there remained nine one-race Steelworkers' seniority units with more than one employee.

It is unnecessary for purposes of this decision to determine when this discrimination by the company ceased. Nor is it necessary to determine whether this assignment policy had adverse economic impact upon blacks, Swint v. Pullman Standard, 539 F.2d 77, 13 FEP Cases 604 (CA5 1976), although here it is clear that the earnings rates in white-only seniority units were higher than those in black-only seniority units. Nor is it necessary at this stage of the proceedings to determine how many, or which, black employees were injured during the period at issue in the litigation by the discrimination-perpetuating seniority system. It sufficies to note that the seniority system has been shown to have a discriminatory impact upon black employees.

This determination of prima facie liability does not, however, necessarily mean that the unions, local and international, are to be held legally responsible under Title VII or §1981 for the consequences of the seniority system. See James, supra, 559 F.2d at 353-54. The concepts of culpability, or relative culpability vis-a-vis that of the company, as noted in James, will be considered later in this opinion. At this point the court notes that the 1971 contract with the Molders was solely with the local union—the international was not a party to it, did not sign it, and so far as appears did not participate in its negotiation or implementation. Under Sinyard v. Foote & Davies, 577 F.2d 943, 17 FEP Cases 1344 (CA5 1978), the

prima facie liability of the International Molders and Allied Workers Union is limited to the period from October 4, 1971, one year before filing the lawsuit, to October 31, 1971, the expiration date of the last contract in which it had in any way participated.[10]

III. The Bona Fides and Purposes of the Seniority System.

This court has previously held that the burden of persuasion on a claim of immunity under 2000e-2(h) is upon the defendants. Swint v. Pullman Standard, 17 EPD §8604, 17 FEP Cases 730 (N.D.Ala. 1978). The court there also analyzed the standards by which such a defense is to be measured under the Teamsters and James decisions—an analysis which need not here be repeated other than to emphasize that the factors outlined in James for special consideration are "ultimately but aids, or focal points, for deciding 'whether there has been purposeful discrimination in connection with the establishment or continuation of a seniority system,' which is in turn 'integral to a determination that the system is or is not bona fide.' " 17 EPD at 7105, 17 FEP Cases at 739.

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[10] The period of prima facie liability for Molders' Local 342 is from December 23, 1968, to July 1972; for the Patternmakers League of North America from October 4, 1971, to November 1972; and for the Patternmakers Association of Birmingham from January 26, 1969, to November 1972. The periods of prima facie liability for the local and international Boilermakers and IAM unions are from the applicable limitations dates, earlier discussed, to the present time, although it is clear that the adoption of modified plant service in January 1975 has had ameliorating effects for many black employees.

[22 FEP Cases, at 1699-1700]

A. Neutrality of the System.

The provisions in the seniority rules which precluded (and after 1975 limited) use of plant service upon transferring between jobs represented by different unions were facially neutral. [22 FEP Cases, at 1700] That is, by their wording they applied equally to all whites as well as to all blacks. Likewise, the evidence establishes that in actual operation these provisions were applied in a uniform manner without regard to race or color of the employee.

The plaintiffs assert that these inhibitions upon transfer affected more blacks than whites. To the extent this argument is based upon the fact that there were more black production and maintenance employees than white it is clearly correct but of little significance.[11] Of greater merit is their position that, when the economic disparities of the different seniority units are considered, a much larger percentage of blacks than whites would have had reason to desire transfer but for loss of seniority under the rules. As noted in Swint, supra, this argument has some similarity to a proposition rejected by the Fifth Circuit in the earlier Swint decision, 539 F.2d 77, 13 FEP Cases 604 (CA5 1976). The argument further assumes that all employees would have the requisite abilities and aptitudes (whatever those may be) for entry into craft positions, whereas it may well be that the inhibitions to transfer into a given craft union had more actual impact upon white craftsmen in other units than upon black production workers.

In any event, the plaintiffs' argument on this point is virtually foreclosed by Teamsters. In that case, as dis-

[11] It could hardly be argued that the greater the percentage of black workers, the more suspect the seniority system, and *vice versa*.

cussed in Swint, supra, 17 EPD at 7100, 17 FEP Cases at 733-734, more whites than non-whites in absolute numbers, but a higher percentage of non-white than of white employees in relative terms, were inhibited by the seniority rules from transferring to the economically more desirable line-driver jobs. Yet, despite either disparity, the Court in Teamsters viewed the system as applying "equally to all races and ethnic groups." 431 U.S. at 355. By like token, the conclusion must be reached that the seniority system here under attack has been "neutral", applying equally to black and white.

B. Rationality of Seniority/Bargaining Units.

The separation of several functionally related jobs into different seniority units casts an obvious shadow upon the sytem here under challenge. The explanation offered by the defendants is that there have been six different unions representing production and maintenance employees, with the employees in some departments divided between two unions. These representational issues, the defendants say, were resolved in keeping with—indeed, pursuant to elections directed by—NLRB decisions. Implicit in the defendants' argument, and not challenged by the plaintiffs, is that structuring of seniority benefits to units which follow union lines has been, at least until recently, in accord with industry practice.[12]

The plaintiffs meet this argument frontally, analyzing the development of the representational units and finding

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[12] It should be noted that, until the last decade this approach to seniority has also been followed by the predominantly black Steelworkers. In their post-trial brief plaintiffs acknowledge (p. 8) that the departmental systems of seniority are not in issue in this case.

[22 FEP Cases, at 1700]

the units themselves to be inconsistent with industry practice and, indeed, the product of racial animus over the years.

The basic components of the representational structure were defined as a result of elections directed by the NLRB in early 1940. See In the Matter of United States Pipe & Foundry Company and Steel Workers Organizing Committee, 19 NLRB No. 102, 21 LRRM 671 (1940). In this inter-union struggle for representation, five election units were designated in keeping with then prevailing NLRB policies, in each the industrial union (the predecessor of the Steelworkers) being pitted against an A.F. of L. union.[13]

That the elections had racial implications cannot be doubted. The Patternmakers and IBEW were selected as representatives by small, all-white, all-craft election units. The IAM, which barred blacks from union membership, and the Boilermakers, which relegated blacks to inferior "auxiliary" lodges, were selected by units composed primarily of white craftsmen. The bulk of the employees, predominantly black, were in the fifth unit, and chose the Steelworkers over the Molders, the latter having apparently alienated many blacks by what were perceived to be discriminatory practices. It may be noted that, had the Steelworkers won any of the other elections, such units would have been combined with the fifth unit as a single bargaining element. On the other hand, had all the elections been reversed, there would have resulted the same

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[13] It would be inaccurate to refer to the Molders as a craft union inasmuch as they were seeking to continue to represent all P&M workers not covered in the representational claims of the other A.F. of L. unions.

[22 FEP Cases, at 1701]

basic separation between craft [22 FEP Cases, at 1701] and noncraft units which is at the root of the plaintiffs' present attack.

The configuration of these original election units was not, however, irrational when viewed in the perspective of the existing conflict within the labor movement concerning craft and industrial unions. Nor were the claims made by the various unions at this time inconsistent with their own representational goals—it being significant on this point that, notwithstanding discrimination against blacks within their own organizational structures, the IAM, the Boilermakers, and the Molders were nevertheless seeking to represent black employees at U.S. Pipe. While the outcome of the elections was no doubt affected by racial considerations—by both blacks and whites—it must be kept in mind that the national policy permitting self-determination by affected employees within units determined under NLRB proceedings requires, by its very nature, tolerance for individual choices which may be the product of prejudice or otherwise ignoble. This is not to say that racial overtones involved in the initial certifications are unimportant in considering the bona fides of later seniority systems under all factors listed in James; it is rather to say that, despite these overtones, the original structuring of representational units was rational and in accord with general NLRB precedents and common industry and union practice.

In 1949 the Molders were back before the NLRB, this time obtaining an order for a special representational election for a unit composed of molders, coremakers, and their apprentices. See In the Matter of United States Pipe and Foundry Company and International Molders

[22 FEP Cases, at 1701]

and Foundry Workers Union, 84 NLRB No. 105, 24 LRRM 1331 (1949). For this small, all-white, craft unit, the Molders won. In attacking this restructuring, the plaintiffs, in addition to emphasizing the racial composition of the new unit, argue that exclusion of the helpers (who were black) was inconsistent with the common organizational goals of the Molders. However, a reading of the NLRB opinion makes it apparent that the board's decision to permit the special election was based upon its policy to allow separate recognition of a group of skilled craftsmen—in essence, that the election would not have been allowed had helpers been included in the proposal. The court concludes that this restructuring, like the original certifications, is due to be treated as rational and consistent with NLRB precedents and standard industry and union practice. It is of interest that the NLRB opinion recites that there had been no interchange between these positions and others in the same department during the nine-year period of representation by the Steelworkers. That is, the molders and coremakers had been treated as a separate seniority unit even when represented by the predominantly black Steelworkers.

In 1950 there were further changes in union representation, this time independently of NLRB proceedings. It appears from business records that during the 1940's some shifts in union allegiance had taken place, with white employees in some Steelworker poisitions paying dues to the IAM or Boilermakers and with blacks in IAM and Boilermakers positions paying dues to the Steelworkers. The evidence, while scanty, indicates that this disaffection by these blacks resulted from their belief that they were being treated unfairly by their designated union representatives; the reason for this action by the whites would,

under the evidence, be only speculation.

In any event, in October 1950 agreements were entered by the company, Steelworkers, IAM, and Boilermakers, under which union jurisdiction over certain positions was altered. The Steelworkers gained jurisdiction over boilermaker helpers, over helpers from the blacksmith department, and over crane hookers—all of whom were black. The Steelworkers ceded jurisdiction over flask patchers, over machine and crane operators, and over "Helpers (White) To be promoted to Millwright Trainee"—all of whom were white. The IAM and Boilermakers became, like the other craft unions, all-white—a situation that did not change until the mid-1960's.

These changes were certainly understandable—solving an administrative problem for the company and satisfying the desires of the thirty-seven job incumbents. While understandable, the changes were not, however, rational. It will be noted that inconsistent approaches are taken with respect to helper positions—separating some (those with black incumbents) from their related skilled positions, while joining others (those with white incumbents) to their related skilled positions. Nor has it been shown that modification of board-certified units was in accord with common practice in the industry.

The establishment in the mid-1960's of the Group II Molder position had some of the attributes of a change in union representation. This job, created when manufacturing changes were made by the company, was added to the unit represented by the Molders, and [22 FEP Cases, at 1702] was filled by persons who had occupied Steelworker positions, including black Molder Helpers. This alignment was certainly rational and, indeed, but for

[22 FEP Cases, at 1702]

closing of the department in 1972, might have provided a route by which blacks would have progressed into craft positions.

In summary, the court concludes that—with the exception of the positions involved in the 1950 inter-union transfers—the bargaining units and in turn the seniority units were rational and in accord with NLRB precedents and common industry practice. The contrary conclusion is reached with respect to the jobs affected by the 1950 changes.

C. Genesis of Seniority System.

There can be no doubt but that the seniority system was instituted at a time of widespread racial discrimination—in the plant, in the unions,[14] and in the community as a whole. There is no need even to recite here the evidence presented in this cause to show that discrimination, or to consider the propriety of taking judicial notice of such matters.[15] Moreover, as was discussed supra, racial considerations were involved in the 1940 elections which produced the bargaining units and in the 1950 inter-union transfers of certain positions between bargaining units.

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[14] The evidence in this cause does support the finding, as was also true in Swint, supra, 17 EPD 7103-04, 17 FEP Cases at 738, that the Steelworkers constituted "one of the few institutions in the area which did not function in fact to foster and maintain segregation." 17 EPD 7104, 17 FEP Cases at 738.

[15] By footnote in a recent decision, the Supreme Court has, without apparently considering the limitations of Rule 201 of the Federal Rules of Evidence, indicated that judicial notice could be taken of the exclusion of blacks from craft positions. See United Steelworkers v. Weber, 443 U.S. 193, 47 L W 4851, 4852 n. 1. 20 FEP Cases 1 (June 27, 1979).

[22 FEP Cases, at 1702]

The decision that this factor should be resolved "in favor of" the plaintiffs' position in this litigation does not mean that the seniority system necessarily falls outside the immunity of 42 U.S.C.A. §2000e-2(h).[16] This factor is but one of several focal points for consideration and, as noted in Swint, supra, 17 EPD at 7103, n. 20, 7107, 17 FEP Cases at 737, is not dependent upon a finding of causative relationship between racial discrimination and the seniority system itself.

D. Purposes of Seniority System.

The fourth factor is "whether the system was negotiated and has been maintained free from any illegal purpose." James, supra, 559 F.2d at 352. Extensive evidence has been presented to the court concerning the postures and proposals of the parties during the collective bargaining negotiations of 1968 and subsequent triennial sessions; the positions of the parties with respect to earlier agreements is left largely to inference.

It appears that the fundamental characteristic of this seniority system remained constant from formal unionization in 1940 to the early 1970's – that is, allowing exercise of seniority for promotions, layoffs, and recalls only as among employees of the same union working in the same department and measuring that seniority by the length of employment in the particular seniority unit. This type

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[16] To the extent, as argued by plaintiffs ,that Chrapliwy v. Uniroyal, Inc. 15 EPD 97933, 15 FEP Cases 822 (N.D.Ind. 1977), can be read as holding unavailable the §2000e-2(h) immunity for all seniority systems which were adopted at a period of racial discrimination, this court disagrees, believing that construction to be inconsistent with Teamsters and James.

[22 FEP Cases, at 1702-3]

of seniority, which has been commonplace until relatively recently, was the form adopted by the all-white unions (IBEW and Patternmakers), by the predominantly-white unions (IAM and Boilermakers), and by the predominantly-black union (Steelworkers). It was the form adopted by the Molders when they gained recognition in 1949. The court concludes that in each instance the system was adopted for other than racial reasons. More particularly, it is clear that the failure by the craft unions to adopt a system allowing employee transfers with carryover of seniority was not due to a fear of black encroachment—it was rather to protect against competition from other white craftsmen.

The alterations to the seniority units which occurred in 1950 stand on a different footing. The court views these changes as racially motivated—intended to, and effecting, increased seniority security for certain whites (by removing them from a Steelworkers' unit and by placing them in a craft union from which blacks were concurrently removed), as well as increasing promotional opportunities for some of them (placement as Millwright trainees).

A system of plant-wide seniority was, as previously indicated, instituted in the 1975 contracts with the unions which then remained i.e., the Steelworkers, IAM, IBEW, and Boilermakers. As might be expected, agreement to such a fundamental change did not occur overnight. Back in 1968 negotiations the company had indicated a willingness to consider transfers between bargaining units without forfeiture of seniority. While nothing came of this suggestion, the Steelworkers and IAM contracts did [22 FEP Cases, at 1703] provide for retentions of seniority on intra-union transfers during a reduction in force, and

the Steelworkers contract provided for bidding on vacancies in other Steelworkers' seniority units, though on the basis of departmental age. In the 1971 negotiations the company proposed to the unions a form of plant-wide seniority for inter-unit transfers; and an "Inter-union Seniority Agreement" was actively discussed among the various unions. Accord, however, was not reached—not only because, as plaintiffs emphasize, of resistance by some of the craft unions, but also because of division within the Steelworkers union. It should be noted that the 1971 Steelworkers contract retained the concept of departmental age for promotional purposes, and permitted use of plant-age on layoffs only at the lowest-paid Steelworker positions. The limitations placed under the 1975 and 1977 agreements upon use of plant-wide seniority—i.e., the union preference on promotions and provision that journeymen would not be displaced on reductions by other than journeymen of the same craft—constituted a joint union proposal, the Steelworkers not pressing for adoption of the broader-form company proposal in order to present a common union front.

Racial considerations were involved in the 1968, 1971, 1975, and 1977 negotiations concerning the modification of seniority, but in an unusual way. The clear message conveyed upon a reading of the negotiation minutes, and substantially confirmed by the testifying witnesses, is that racial considerations were involved, not in *opposing* the changes in the seniority system, but rather in *proposing* those changes. The push for change—which was primarily by the company and to a lesser degree by the Steelworkers—was largely motivated by a fear of the outcome of claims being pressed administratively and later in court under Title VII. The concern was that the seniority system—without regard to its bona fides and

[22 FEP Cases, at 1703]

purposes, for Teamsters had not yet been decided—would create liability for prior discrimination and in any event result in court-ordered plant-wide seniority. This is not to say, of course, that the Steelworkers' bargaining representatives were not also motivated by a growing awareness of increased promotional opportunities afforded by a broader seniority system—a fact, however, which had not prompted Steelworker negotiation proposals in the 1940-68 period. As broadened seniority came to be seen by Steelworkers as increasing their opportunities, it was also perceived by members of the craft unions as threatening their job security—and it was this latter perception, not the color of their potential competitors, which caused their resistance to the change in seniority. Their opposition ultimately yielded, but only when confronted by firmness in the company's position and by the then apparent certainty (pre-Teamsters) of judicial intervention —a point highlighted by their continued insistence on protection in the event of layoffs against their fellow white craftsmen.

In summary, the court concludes that, with the exception of the changes in the system effected by the 1950 transfers, the seniority system here under challenge was negotiated, and has been maintained, free of any purpose of racial discrimination.

E. Totality.

The court is called upon under James to use the four factors as aids for deciding "whether there has been purposeful discrimination in connection with the establishment or continuation of a seniority system", which is in turn "integral to a determination that the system is or is not bona fide." 559 F.2d at 351. The "genesis" factor is decided favorably to the plaintiffs' position with respect

to the entire seniority system, provided, that is, that the factor be evaluated without regard to any causative relationship between the existence of discriminatory practices and the seniority system itself. The "neutrality", or equal application, factor is decided favorably to the defendants' position with respect to the entire seniority system. The "rationality" and "purposes" factors are decided favorably to the plaintiffs with respect to certain changes in jobs effected in 1950, but in other respects favorably to the defendants.

The four factors are not stones to be placed mechanistically on an imaginary scale. Looking however to these factors and, indeed, to the totality of the system, the court concludes, with one exception, that the system has been "bona fide"; that the differences in terms, conditions, or privileges of employment resulting thereunder have not been "the result of an intention to discriminate" because of race or color; and that the defendants have met the burden of proving the applicability of 42 U.S.C.A. §2000e2(h).

The one exception relates to the transfer of certain jobs in 1950 between seniority units. The differences in terms, conditions and privileges of employment resulting from these transfers are the result of an intention to discriminate because of race and color and [22 FEP Cases, at 1704] accordingly are not protected under §2000e-2(h).[17]

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[17] The question may well be asked whether some aspects of a seniority system can be immunized under §2000e-2(h), while others not. While an affirmative response is given under the facts of this case, the court can envision circumstances in which the pernicious portion of a system would effectively poison the system as a whole. That is not the situation here.

[22 FEP Cases, at 1704]

IV. LIABILITY

It is appropriate to call for a second stage of trial, in which class members—now armed with a presumption of discrimination—can present individual claims for damages. These claims will be quite limited; i.e., during the applicable period they were injured by virtue of jobs not having remained in the seniority units to which they were allocated prior to the 1950 agreements.

Liability for such claims as may be established is due to be fixed upon Lodge 359 of the IAM respecting those positions switched between the Steelworkers and the IAM and upon Local 583 of the Boilermakers respecting those switched between the Steelworkers and the Boilermakers. The internationals of the IAM and Boilermakers are not shown to have been sufficiently involved in these 1950 agreements to justify charging them with responsibility therefor. The Steelworkers, while a party to these agreements, do not appear to have acted from any racial animus—having rather merely accepted additional blacks who felt discrimination in their certified union and having released whites who apparently preferred representation by an all-white union. The Patternmakers, Molders, and IBEW are likewise not chargeable with responsibility in connection with these agreements, to which they were not even parties.

The applicable period of damage claims will begin on January 13, 1969, with respect to the potential liability of IAM Lodge 359, and on January 26, 1969, with respect to that of Boilermakers Local 583. The defendants have asserted that, with declining employment at the plant and with elimination of apprenticeship programs, there were very few vacancies after these dates. It may also be

that class members who may make claims with respect to such vacancies may be shown not to have had the necessary qualifications for such positions. These, however, are matters which are for consideration during a second stage of trial, and not at this point.

V. Conclusion

With respect to the aspect of the seniority system found to violate Title VII, the court will order injunctive relief [18] and will provide for a second trial to determine the liability of IAM Lodge 359 and Boilermakers Local 583 for back pay, costs, and attorneys fees.[19] All parties are directed to proceed with preparations for sending of notice to class members concerning the proposed settlements, which notices shall indicate the substance of this ruling.

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[18] The agreement proposed by the parties covering injuctive relief, if approved by the court, may resolve this issue.

[19] The award of attorneys fees against the two unions will take into account the limited degree to which the plaintiffs have been "prevailing parties" in this litigation. The extent to which claims for back pay against these unions may be affected by distribution of settlement funds (if the settlement be approved) contributed by the company will be for consideration in subsequent proceedings.

APPENDIX C

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Nos. 80-7107
80-7256

D. C. Docket No. CA 72-887 & CA-72-P-0887-S

Joseph TERRELL, Walter Dudley, Thomas Green, Johnny Long, Albert Mason, Marcus Oakes, Sam Walker, on behalf of themselves and the class they represent,
Plaintiffs-Appellants,

v.

UNITED STATES PIPE & FOUNDRY CO. et al.,
Defendants,
Local 2140, United Steelworkers Union Local 342, International Molders, Allied Workers Union, et al.,
Defendants-Appellees.

Joseph TERRELL, Jr., et al.,
Plaintiffs-Appellants,

v.

UNITED STATES PIPE & FOUNDRY CO. et al.,
Defendants,
Local 2140, United Steelworkers Union,
Defendant-Appellee.

Appeals from the United States District Court for the Northern District of Alabama

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Before FAY and HATCHETT, Circuit Judges, and GROOMS,* District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed in part and reversed in part; and that this cause be, and the same is hereby remanded to the said District Court for further proceedings in accordance with the opinion of this Court;

IT IS FURTHER ORDERED that the plaintiffs-appellants pay to the defendants-appellees the cost on appeal, to be taxed by the Clerk of this Court.

May 14, 1981

*District Judge of the Northern District of Alabama, sitting by designation.

APPENDIX D

[U.S. Court of Appeals, FILED Aug. 7, 1981,
Gilbert F. Ganucheau, Clerk]

[U.S. Court of Appeals, RECEIVED
Aug. 7, 1981, Atlanta, GA.]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT B**

Nos. 80-7107, 80-7256.

Joseph TERRELL, Walter Dudley, Thomas Green, Johnny Long, Albert Mason, Marcus Oakes, Sam Walker, on behalf of themselves and the class they represent,
Plaintiffs-Appellants,

v.

UNITED STATES PIPE & FOUNDRY CO. et al.,
Defendants,
Local 2140, United Steelworkers Union
Local 342, International Molders, Allied Workers Union, et al., Defendants-Appellees.

Joseph TERRELL, Jr., et al.,
Plaintiffs-Appellants,

v.

UNITED STATES PIPE & FOUNDRY CO. et al.,
Defendants,
Local 2140, United Steelworkers Union,
Defendant-Appellee.

Appeals from the United States District Court for the Northern District of Alabama

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ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(opinion May 14, 1981, 5 Cir., 198__, ____F.2d____).

(August 7, 1981)

Before FAY and HATCHETT, Circuit Judges, and GROOMS*, District Judge.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge of this Administrative Unit in regular active service having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ JOSEPH W. HATCHETT

United States Circuit Judge

CLERK'S NOTE:
SEE RULE 41 FRAP AND LOCAL
RULE 17 FOR STAY OF THE
MANDATE

*District Judge of the Northern District of Alabama, sitting by designation.

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-295

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, ET AL.,
Petitioners

v.

JOSEPH TERRELL, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 7, 1981

/s/ BYRON R. WHITE

Associate Justice of the Supreme Court of the United States

Dated this 9th
day of October, 1981

APPENDIX F

[19 NLRB, at 1016(No. 102)]

In the Matter of UNITED STATES PIPE & FOUNDRY COMPANY *and* STEEL WORKERS ORGANIZING COMMITTEE

Case No. R-1651.—Decided January 29, 1940

Cast Iron Pipe Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; controversy as to appropriate unit—*Unit Appropriate for Collective Bargaining:* controversy as to craft units or unit of production and maintenance employees, exclusive of supervisory and clerical employees; desires of employees to determine—*Elections Ordered:* five separate elections to determine appropriate unit or units and representatives thereof.

Mr. Clarence D. Musser and *Mr. Alexander E. Wilson, Jr.*, for the Board.

Mr. Jelks H. Cabaniss, of Birmingham, Ala., for the Company.

Mr. Yelverton Cowherd and *Mr. Noel R. Beddow*, of Birmingham, Ala., for the S. W. O. C.

Mr. J. A. Lipscomb, of Bessemer, Ala., *Mr. M. P. Cushing*, of Birmingham, Ala., and *Mr. George Q. Lynch*, of Washington, D. C., for the P. M. A.

Mr. Shelley Walden, of Cincinnati, Ohio, for the I. M. U.

Mr. J. D. Baumgardner, of Birmingham, Ala., and *Mr. David Kaplan*, of Washington, D. C., for the I. A. M.

Mr. Arthur P. Smith, of Birmingham, Ala., for the Boilermakers.

Mr. J. R. May, of Birmingham, Ala., and *Mr. Lawson Wimberly*, of Washington, D. C., for the I. B. E. W.

Mr. Ivar Peterson, of counsel to the Board.

[19 NLRB, at 1016-7]

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On June 22, 1939, Steel Workers Organizing Committee, herein called the S. W. O. C., filed with the Regional Director for the Tenth Region (Atlanta, Georgia) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of United States Pipe & Foundry Company, Bessemer, Alabama, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 13, [19 NLRB, at 1017] 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 22, 1939, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the S. W. O. C., and upon the following labor organizations claiming to represent employees directly affected by the investigation: International Molders' Union of North America, herein called the I. M. U.; International Brotherhood of Electrical Workers, Local No. 698, herein called the I. B. E. W.; International Association of Machinists, Lodge No. 359, herein called the I. A. M.; International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America,

Local No. 4, herein called the Boilermakers; Pattern Makers Association of Birmingham, Alabama, herein called the P. M. A.; and Stenographers, Typists, Bookkeepers and Assistants Union, Local No. 19403. Pursuant to the notice, a hearing was held on December 1, 4, 5, and 6, 1939, at Birmingham, Alabama, before E. G. Smith, the Trial Examiner duly designated by the Board. The Board, the Company, the S. W. O. C., and the P. M. A. were represented by counsel; the I. M. U., the I. B. E. W., the I. A. M., and the Boilermakers, by their duly authorized representatives. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 21, 1939, oral argument was had before the Board in Washington, D. C. The I. A. M., the P. M. A., and the I. B. E. W. were represented by counsel, and the I. M. U. by one of its officers. Briefs were filed by the P. M. A. and the I. B. E. W., which have been considered by the Board.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The Business of the Company

United States Pipe & Foundry Company, a New Jersey corporation, is engaged in the manufacture and sale of

[19 NLRB, at 1017-8]

cast-iron pipe, special foundry castings, and special machinery at its plant in Bessemer, Alabama. About 90 per cent of the raw materials used in the opera- [19 NLRB, at 1018] tions at the Bessemer plant, consisting chiefly of pig iron, cast iron, scrap, and coke, are purchased in the State of Alabama. About 90 per cent of the products manufactured at the Bessemer plant, having an annual value of about $1,000,000, are sold and distributed outside the State of Alabama. The Company normally employs at the Bessemer plant about 700 production and maintenance employees and about 40 clerical and supervisory employees. For the purposes of this proceeding, the Company admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

Steel Workers Organizing Committee is a labor organization authorized to act on behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America for collective bargaining purposes.

Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, herein called the Amalgamated, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership production and maintenance employees at the Company's Bessemer plant, exclusive of supervisory and clerical employees.

International Association of Machinists, Lodge No. 359, is a labor organization affiliated with the American Federation of Labor, admitting to membership white employees at the Bessemer plant engaged as machinists, apprentice machinists, machinsts' helpers, blacksmiths, welders, and handymen.

International Brotherhood of Electrical Workers, Local No. 698, is a labor organization affiliated with the American Federation of Labor, admitting to membership electricians at the Company's Bessemer plant.

International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America, Local No. 4, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees at the Bessemer plant engaged as boilermakers, boilermakers' helpers, welders, apprentice welders, and welders' helpers.

Pattern Makers Association of Birmingham, Alabama, an affiliate of Pattern Makers League of North America, is a labor organization affiliated with the American Federation of Labor, admitting to membership pattern makers and pattern makers' apprentices employed at the Company's Bessemer plant.

International Molders' Union of North America is a labor organization affiliated with the American Federation of Labor having jurisdiction over "all workers engaged in the production of castings." Local No. 342 of the I. M. U. is a labor organization admitting to mem-
[19 NLRB, at 1019] bership all employees of the Company's Bessemer plant, excluding supervisory and clerical employees and employees eligible to membership in the foregoing four organizations affiliated with the American Federation of Labor.

III. THE QUESTION CONCERNING REPRESENTATION

On April 14, 1938, the Company entered into an agreement with the I. A. M., the I. B. E. W., the Boilermakers, the P. M. A., and the I. M. U., recognizing each of the

foregoing organizations as the collective bargaining representative of its members employed in the Bessemer plant. The agreement is for no definite period but provides that "if any changes in these rules and regulations are desired by either Company or employee, written notice shall be given and conference on such change shall be held within thirty (30) days thereafter." In June 1939, representatives of the S. W. O. C., claiming to represent a majority of the employees at the Bessemer plant, sought recognition. The Company took the position that in view of the above-mentioned agreement, the uncertainty as to the appropriate unit or units, and the conflicting claims of representation, it would not recognize any union as the exclusive representative of any group of employees until the matter had been decided by the Board.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT OR UNITS

The Amalgamated, through the S. W. O. C., contends that all production and maintenance employees at the Bessemer plant, exclusive of supervisory and clerical

employees, constitute a unit appropriate for the purposes of collective bargaining.

The I. A. M. claims that an appropriate unit consist of machinists, apprentice machinists, and machinists' helpers. The I. A. M. would include within its unit employees classified on the November 18, 1939, pay roll as toolmen, crane hookers, blacksmith-shop employees, welders, apprentice welders, and welders' helpers. Most of these employees are [19 NLRB, at 1020] employed in the machine shop, in the tools, repairs, and replacements department, in the repairs, machinery, and equipment department, and in the blacksmith shop. Although the I. A. M. does not admit colored employees to membership, it made no claim that such employees be excluded from the unit it claimed to be appropriate. We shall include colored employees in the unit sought by the I. A. M.[1]

The I. B. E. W. claims that the electricians constitute an appropriate unit. On the November 18, 1939, pay roll 12 employees are classified as electricians.

The Boilermakers contends that an appropriate unit would consist of employees employed as boilermakers, boilermakers' helpers, welders, apprentice welders, and welders' helpers. One boilermaker and two boilermakers'

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[1] *Matter of American Tobacco Company, Incorporated, Richmond Smoking Branch and Committee for Industrial Organization, Local No. 472*, 9 N. L. R. B. 579; *Matter of Floyd A. Fridell, individually and trading as Carolina Marble & Granite Works* and *Granite Cutters' International Association of America, Charlotte Branch*, 11 N. L. R. B. 249; *Matter of Interstate Granite Corporation* and *Granite Cutters' International Association of America, Charlotte Branch*, 11 N. L. R. B. 1046.

helpers are listed on the November 18, 1939, pay roll as being employed in the boiler shop; two boilermakers are employed in the repairs, machinery, and equipment department.

The P. M. A. claims that the pattern makers and pattern makers' apprentices constitute an appropriate unit. The November 18, 1939, pay roll listed nine employees in the pattern shop within the above classifications.

The I. M. U. claims that all employees of the Company, excluding supervisory and clerical employees and those employees claimed by the other four American Federation of Labor unions, constitute an appropriate unit.

The claims of the five American Federation of Labor unions as to the appropriate units do not conflict except in the case of the welders, apprentice welders, and welders' helpers, who are claimed by both the I. A. M. and the Boilermakers. The record reveals, however, that the conflict as to these employees is the result if inadvertence rather than active dispute. The representative of the I. A. M. testified that welders were eligible to membership in either the I. A. M. or the Boilermakers and that for some time it had been customary for welders to affiliate with the I. A. M. Three welders and one apprentice welder are employed in the boiler shop; one welder and three apprentice welders are employed in the repairs, machinery, and equipment department; the number of welders' helpers in either department does not appear, since the pay roll does not contain such classification. Although the record is not clear as to the difference in functions, if any, between welders in these two departments, it appears that the welders in the boiler shop are

more closely identified with the boilermakers, whereas the welders in the repairs, machinery, and equipment department are more [19 NLRB, at 1021] closely identified with the machinists. We conclude, therefore, that the welders, apprentice welders, and welders' helpers in the boiler shop should be included in the unit claimed by the Boilermakers and that such employees in the repairs, machinery, and equipment department should be included in the unit claimed by the I. A. M.

Prior to 1934 the P. M. A., the I. A. M., and the I. M. U. had represented the pattern makers, machinists, and molders, respectively, employed by the Company, and these three organizations had negotiated with the Company on behalf of such employees, with regard to grievances, wages, hours, and other working conditions. No contracts resulted from these negotiations. In 1934 the Company negotiated with an American Federation of Labor federal local union, which embraced employees other than those within the jurisdiction of the three organizations above mentioned. As a result of the 1934 negotiations, the Company promulgated certain working rules and regulations applicable to all employees. In 1935 the federal local union was absorbed by the I. M. U., which in 1934 had extended its jurisdiction to include all workers employed in the production of castings. The 1934 rules and regulations were, in substance, renewed by the Company in 1935 and 1936, after negotiations with a committee of employees and representatives of the P. M. A., the I. A. M., and the I. M. U. None of the foregoing negotiations resulted in a contract nor was any union formally recognized as the representative of any employees.

[19 NLRB, at 1021-2]

Following negotiations with representatives of the five American Federation of Labor unions, the Company entered into the agreement of April 14, 1938, referred to above, recognizing each union as the collective bargaining representative of its members employed at the Bessemer plant. The agreement, which is for no definite period but is subject to change upon 30 days' notice, provides for the 8-hour day and 40-hour week, seniority, overtime, holidays, and grievance procedure. It contains no terms as to wages, but provides that the Company "will meet with the Shop Committee or representatives as the employees may from time to time determine in regard to wages, hours, and working conditions whenever necessary."

The S. W. O. C. began organizing the Company's employees in December 1938. Lodge No. 2140 of the Amalgamated was chartered in June 1939. During a strike at the plant in June 1939, called by the I. M. U. in order to induce the colored I. M. U. members to reinstate [2] with the I. M. U., the representatives of the S. W. O. C., claiming to represent the delinquent I. M. U. members, sought to effect a settlement of the dispute.

[22 NLRB Cases, at 1022]

The Bessemer plant consists of several departments, which are closely interrelated in the production process and through which most of the products flow in the course of production. A tie-up in any department would substantially hamper or curtail the operation of the entire plant.

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[2] The I. M. U. constitution provides that a "suspended member upon payment of all his indebtedness to the Financial Secretary stands reinstated."

In view of the facts set forth above, it appears that the Company's production and maintenance employees can be considered either as a single unit appropriate for the purposes of collective bargaining as claimed by the Amalgamated, or as five separate units as contended by the American Federation of Labor unions. In accordance with our usual practice in this type of case, we hold that the determining factor is the desire of the employees themselves.[3]

As stated in Section VI below, however, the record is inconclusive as to the desire of the employees. We shall, therefore, direct that five separate elections by secret ballot be held. Upon the results of such elections will depend the determination of the appropriate unit or units.

VI. THE DETERMINATION OF REPRESENTATIVES

The I. A. M. introduced in evidence a petition, dated November 29, 1939, bearing 73 signatures, reciting that the signers were members of the I. A. M. and employees of the Company.

The I. B. E. W. presented evidence, by the testimony of its financial secretary and a statement signed by the 12 electricians employed at the Bessemer plant, that it had been designated and selected by such employees as their representative.

The Boilermakers presented evidence that nine of the employees in the unit it claims to be appropriate were members of that organization.

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[3] *Matter of The Globe Machine and Stamping Co.* and *Metal Polishers Union Local No. 3; International Association of Machinists, District No. 54*, 3 N. L. R. B. 294, and subsequent cases.

[19 NLRB, at 1022-3]

The P. M. A. introduced in evidence a statement signed by eight employees within the unit claimed by the P. M. A. authorizing the P. M. A. to act as their collective bargaining representative.

The financial secretary of the I. M. U. testified that a large portion of the 638 members of Local No. 342 were employed at the Company's Bessemer plant. He further testified, however, that about 250 employees who had been reinstated by the I. M. U. as a result of the June 1939 strike had since that time become delinquent in the payment of dues.

At the hearing the Amalagamated submitted for the inspection of the Trial Examiner about 424 membership application cards. The financial secretary of Amalgamated Lodge No. 2140 testified that 478 employees of the Company had signed such cards. Although the [19 NLRB, at 1023] financial secretary testified that no pattern makers, boilermakers, machinists, electrical workers, or molders were members of the Amalgamated, Noel Beddow, the executive director of District 3 of the S. W. O. C., testified that, with the exception of pattern makers, many employees within such classifications had expressed a desire to be represented by the Amalgamated but had refrained from joining because of fear of threats and reprisals.

Under these circumstances, we conclude that elections are necessary to resolve the question of bargaining representative or representatives as well as the question of the appropriate unit or units. Balloting shall be conducted as follows:

1. Among the employees within the classifications claimed by the I. A. M. to constitute an appropriate unit,

but excluding welders, apprentice welders, and welders' helpers in the boiler shop, to determine whether they desire to be represented by the I. A. M., by the Amalgamated, or by neither.

2. Among the electricians to determine whether they desire to be represented by the I. B. E. W., by the Amalgamated, or by neither.

3. Among employees within the classifications claimed by the Boilermakers to constitute an appropriate unit, but excluding welders, apprentice welders, and welders' helpers in the repairs, machinery, and equipment department, to determine whether they desire to be represented by the Boilermakers, by the Amalgamated, or by neither.

4. Among the pattern makers and pattern makers' apprentices to determine whether they desire to be represented by the P. M. A., by the Amalgamated, or by neither.

5. Among all remaining production and maintenance employees, exclusive of supervisory and clerical employees, to determine whether they desire to be represented by the I. M. U., by the Amalgamated, or by neither.

In the event that a majority of the employees voting in one of these groups choose the Amalgamated, all employees within that group will be combined with employees within any other groups which similarly choose the Amalgamated, to constitute a single unit for purposes of collective bargaining. Thus, if the Amalgamated is accorded a majority on each of the five ballots, there will be a single appropriate unit. Wherever a ballot results in a majority for one of the unions other than the Amalga-

[19 NLRB, at 1023-4]

mated, employees within the classifications covered by that ballot will constitute a separate unit for the purposes of collective bargaining.

For the purpose of determining eligibility to vote, we shall direct the use of the Company's last regular pay roll immediately preceding this Direction of Elections, including employees who did not work during such pay-roll period because they were ill or on vacation, but [19 NLRB, at 1024] excluding those employees who have since quit or who have been discharged for cause.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusion of Law

A question affecting commerce has arisen concerning the representation of employees of United States Pipe & Foundry Company, Bessemer, Alabama, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with United States Pipe & Foundry Company, Bessemer, Alabama, separate elections by secret ballot shall be conducted as early as possible but not later than

thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Tenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among those employees of the United States Pipe & Foundry Company, Bessemer, Alabama, plant, who fall within the five groups described below who were on the Company's last regular pay roll immediately preceding the date of this Direction, including employees who did not work during such payroll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding supervisory and clerical employees and those who have since quit or who have been discharged for cause:

(a) All machinists, apprentice machinists, toolmen, crane hookers, blacksmith-shop employees, machinists' helpers, and the welders, apprentice welders, and welders' helpers in the repairs, machinery, and equipment department, to determine whether they desire to be represented by International Association of Machinists, Lodge No. 359, or by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, for the purposes of collective bargaining, or by neither;

(b) All electricians to determine whether they desire to be represented by International Brotherhood of Electrical Workers, Local [19 NLRB, at 1025] No. 698, or by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, for the purposes of collective bargaining, or by neither;

[19 NLRB, at 1025]

(c) All boilermakers and boilermakers' helpers, and the welders, apprentice welders, and welders' helpers in the boiler shop, to determine whether they desire to be represented by International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America, Local No. 4, or by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, for the purposes of collective bargaining, or by neither;

(d) All pattern makers and pattern makers' apprentices, to determine whether they desire to be represented by Pattern Makers Association of Birmingham, Alabama, or by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, for the purposes of collective bargaining, or by neither;

(e) All remaining production and maintenance employees to determine whether they desire to be represented by International Molders' Union of North America, Local No. 342, or by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, for the purposes of collective bargaining, or by neither.

MR. EDWIN S. SMITH, concurring:

Although the 1938 contract between the Company and the five American Federation of Labor unions was jointly negotiated and provided for general conditions applicable to all employees, I concur in the decision. The record shows that the P. M. A., the I. A. M., and the I. M. U. had negotiated separately with the Company prior to 1938. The contract entered into in 1938, more than a year before the S. W. O. C. sought to represent any employees,

while jointly negotiated,[4] was so framed as to recognize the separate identity of the five crafts and contemplated the presentation of grievances by the respective unions for their members. For these reasons, I concur in the determination that the craft groups should be given an opportunity to vote either to retain their separate bargaining status or to merge into one industrial unit.[5]

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[4] Representatives of each of the five unions participated in the negotiations and the contract was signed separately by them on behalf of their respective union.

[5] See my concurring opinions in *Matter of American Hardware Corporation* and *United Electrical and Radio Workers of America*, 4 N. L. R. B. 412; *Matter of Vultee Aircraft Division, Aviation Manufacturing Corporation* and *United Automobile Workers of America, Local 361*, 9 N. L. R. B. 32; *Matter of The William Powell Company* and *Pattern Makers Association of Cincinnati*, 12 N. L. R. B. 115.

APPENDIX G

[21 NLRB 671 (No. 67)]

In the Matter of UNITED STATES PIPE & FOUNDRY COMPANY *and* STEEL WORKERS ORGANIZING COMMITTEE

Case No. R–1651

SUPPLEMENTAL DECISION

AND

CERTIFICATIONS OF REPRESENTATIVES

March 16, 1940

On January 29, 1940, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election [1] in the above-entitled proceedings. Pursuant to the Direction of Elections, elections by secret ballot were conducted on February 13, 1940, under the direction and supervision of the Regional Director for the Tenth Region (Atlanta, Georgia). On February 16, 1940, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, issued and duly served upon the parties an Election Report. No objections to the conduct of the ballot or the Election Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

MACHINISTS GROUP

Total number eligible	110
Total ballots cast	105
Total number ballots cast for the International Association of Machinists Lodge No. 359, affiliated with the American Federation of Labor	85

[1] 19 N. L. R. B. 1016.

[21 NLRB, at 671]

Total number ballots cast for the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, affiliated with Congress of Industrial Organizations	19
Total number votes cast for neither organization	0
Total number of challenged ballots	1
Total number of void ballots	0
Total number of blank ballots	0

[21 NLRB, at 672]

ELECTRICIANS GROUP

Total number eligible	12
Total ballots cast	12
Total number ballots cast for the International Brotherhood of Electrical Workers, Local No. 698, affiliated with American Federation of Labor	12
Total number ballots cast for the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, affiliated with Congress of Industrial Organizations	0
Total number votes cast for neither organization	0
Total number of challenged ballots	0
Total number of void ballots	0
Total number of blank ballots	0

BOILERMAKERS GROUP

Total number eligible	12
Total ballots cast	11
Total number ballots cast for the International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America, Local No. 4, affiliated with American Federation of Labor	11

[21 NLRB, at 672-3]

Total number ballots cast for the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, affiliated with Congress of Industrial Organizations	0
Total number votes cast for neither organization	0
Total number of challenged ballots	0
Total number of void ballots	0
Total number of blank ballots	0

PATTERN MAKERS GROUP

Total number eligible	9
Total ballots cast	9
Total number ballots cast for the Pattern Makers Association of Birmingham, Ala., affiliated with Pattern Makers League of North America, affiliated with American Federation of Labor	9
Total number ballots cast for the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, affiliated with Congress of Industrial Organizations	0
Total number votes cast for neither organization	0
Total number of challenged ballots	0
Total number of void ballots	0
Total number of blank ballots	0

[21 NLRB, at 673]

ALL REMAINING PRODUCTION AND MAINTENANCE EMPLOYEES

Total number eligible	624
Total ballots cast	566
Total number ballots cast for the International Molders Union of North America, Local No. 342, affiliated with American Federation of Labor	126

[21 NLRB, at 673]

Total number ballots cast for the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, affiliated with Congress of Industrial Organizations	414
Total number votes cast for neither organization	15
Total number of challenged ballots	11
Total number of void ballots	0
Total number of blank ballots	0

In the Decision and Direction of Elections above referred to, we stated that upon the results of the elections would rest the determination of the unit or units appropriate for the purposes of collective bargaining. The Board said: "In the event that a majority of the employees voting in one of these groups choose the Amalgamated, all employees within that group will be combined with employees within any other groups which similarly choose the Amalgamated, to constitute a single unit for purposes of collective bargaining. Thus, if the Amalgamated is accorded a majority on each of the five ballots, there will be a single appropriate unit. Wherever a ballot results in a majority for one of the unions other than the Amalgamated, employees within the classifications covered by that ballot will constitute a separate unit for the purposes of collective bargaining."

Upon the entire record in the case, the Board makes the following:

Supplemental Findings of Fact

We find that each of the following five groups of employees, excluding supervisory and clerical employees, employed by United States Pipe & Foundry Company

at its Bessemer, Alabama, plant, constitutes a unit appropriate for the purposes of collective bargaining, and that said units will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise will effectuate the policies of the Act:

(a) Machinists, apprentice machinists, toolmen, crane hookers, blacksmith-shop employees, and the welders, apprentice welders, and welders' helpers in the repairs, machinery, and equipment department;

(b) Electricians;

[21 NLRB, at 674]

(c) Boilermakers and boilermakers' helpers, and the welders, apprentice welders, and welders' helpers in the boiler shop;

(d) Pattern makers and pattern makers' apprentices; and

(e) All remaining production and maintenance employees.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Supplemental Conclusions of Law

1. Machinists, apprentice machinists, toolmen, crane hookers, blacksmith-shop employees, and the welders, apprentice welders, and welders' helpers in the repairs, machinery, and equipment department, employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

[21 NLRB, at 674]

2. Electricians employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Boilermakers and boilermakers' helpers, and the welders, apprentice welders, and welders' helpers in the boiler shop, employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

4. Pattern makers and pattern makers' apprentices employed by United States Pipe & Foundry Company, at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

5. All remaining production and maintenance employees employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

CERTIFICATIONS OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board

Rules and Regulations—Series 2, as amended,
[21 NLRB, at 675]

IT IS HEREBY CERTIFIED that International Association of Machinists Lodge No. 359, has been designated and selected by a majority of the machinists, apprentice machinists, toolmen, crane hookers, blacksmith-shop employees, and the welders, apprentice welders, and welders' helpers in the repairs, machinery, and equipment department, employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, International Association of Machinists, Lodge No. 359, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

IT IS HEREBY CERTIFIED that International Brotherhood of Electrical Workers, Local No. 698, has been designated and selected by a majority of the electricians employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, International Brotherhood of Electrical Workers, Local No. 698, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

IT IS HEREBY CERTIFIED that International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America, Local No. 4, has been designated

[21 NLRB, at 675-6]

and selected by a majority of the boilermakers and boilermakers' helpers, and the welders, apprentice welders, and welders' helpers in the boiler shop, employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, International Brotherhood of Boilermakers, Iron Ship Builders, Welders and Helpers of America, Local No. 4, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

IT IS HEREBY CERTIFIED that Pattern Makers Association of Birmingham, Alabama, has been designated and selected by a majority of the pattern makers and pattern makers' apprentices employed by United States Pipe & Foundry Company at its Bessemer, Alabama, plant, excluding supervisory and clerical employees, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, Pattern Makers Association of Birmingham, Alabama, is the exclusive representative of all such employees [21 NLRB, at 676] for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

IT IS HEREBY CERTIFIED that Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, has been designated and selected by a majority of the remaining production and maintenance employees employed by United States Pipe & Foundry Company at

its Bessemer, Alabama, plant, excluding supervisory and clerical employees, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the Act, Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 2140, through Steel Workers Organizing Committee, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

APPENDIX H

84 NLRB 954 (No. 105)

In the Matter of UNITED STATES PIPE AND FOUNDRY COMPANY, EMPLOYER *and* INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, AFL, PETITIONER

Case No. 10–RC–566.—Decided June 30, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Herman Corenman, hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Gray].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner and Local 2140, United Steelworkers of America, CIO, herein called the Intervenor, are labor organizations claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6)

[84 NLRB, at 954-5]

and (7) of the Act.[1]

4. The appropriate unit; the determination of representatives:

Since 1940,[2] the Intervenor has represented and bargained for a re- [84 NLRB, at 955] sidual production and maintenance unit, presently comprising approximately 700 out of a total of approximately 1,050 production and maintenance employees,[3] at the Employer's Bessemer, Alabama, plant. The Petitioner seeks to sever therefrom a unit of molders, coremakers, and their apprentices,

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[1] The Intervenor contends that a contract executed between it and the Employer on February 19, 1946, as supplemented, amended, and extended, constitutes a bar to a present election. The most recent amendment, executed September 4, 1948, extended the termination date of the contract from April 30, 1949, to July 16, 1950.

The record discloses that the contract provided among other things for maintenance of membership in the Intervenor. However, the Intervenor has not been certified by the Board pursuant to Section 9 (e) (1) of the Act as being authorized to execute such a union-security provision, and the agreement was extended after the effective date of the amended Act. For this reason, and without regard to any other considerations, we find that the contract cannot serve as a bar to a present determination of representatives. *Matter of General Electric Company*, 80 N. L. R. B. 169.

[2] See *Matter of United States Pipe & Foundry Company*, 19 N. L. R. B. 1016, 21 N. L. R. B. 671. The question of a separate unit for molders, coremakers, and their apprentices, was not litigated in this proceeding. Collective bargaining agreements, the most recent of which will not expire until July 16, 1950, have been executed with respect to this unit between the Intervenor and the Employer.

[3] The remaining production and maintenance employees are, as a result of the earlier decision (footnote 2, *supra*), represented by other unions in craft or departmental units.

employed in the special foundry at that plant.[4] The Intervenor opposes such severance on the basis of the bargaining history; the Employer takes no position with respect to the appropriate unit.

In addition to the foundry, in which it manufactures cast iron fittings, sugar house machinery, and various types of special castings, the Employer operates a pipe shop, in which it manufactures cast iron pressure pipe.[5] The foundry is housed in a separate building from the pipe shop. Molders, coremakers, and their apprentices are employed only in the foundry. The molders and coremakers are highly skilled mechanics who are required by the Employer to undergo a 4-year apprenticeship before being qualified for their positions.[6] With the exception of the crane operators, they are the only skilled employees who work exclusively in the foundry.[7] No other employees in the plant possess comparable skills or duties, and there is no interchange between these employees and other employees in the plant.

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[4] The unit sought by the Petitioner includes approximately 43 out of the approximately 146 employees in the special foundry. The other job classifications employed in the foundry are crane operators, hookers and helpers (to molders and coremakers), laborers, shop cleaners, cupola men, oven firemen, utility men, chippers, cement liners, sand cutters, and sand mixers.

[5] The Intervenor's unit includes employees in both the foundry and the pipe shop.

[6] The Petitioner's proposed unit includes three apprentices. The Employer's molders and coremakers have either previously served their apprentiveship with the Employer or have been hired as qualified journeymen.

[7] Skilled maintenance employees who work in the foundry also work in the pipe shop.

[84 NLRB, at 955-6]

Accordingly, on the basis of the foregoing and on the entire record, we find that the molders and coremakers employed in the special foundry at the Employer's Bessemer, Alabama, plant, constitute a homogenous group of skilled craftsmen who, with their apprentices, may, within the meaning of Section 9 (b) of the Act, constitute a separate unit appropriate for the purpose of collective bargaining.[8] Accordingly, we shall make no final unit determination at this time, but shall [84 NLRB, at 956] first ascertain the desires of these employees, as expressed in the election which we shall direct be conducted among:

All molders, molders' apprentices, coremakers, and coremakers' apprentices, excluding supervisors as defined in the Act, employed at the Employer's Bessemer, Alabama, plant. If a majority of the employees in the voting group select the Petitioner, they will be deemed to have indicated their desire to be represented in a separate appropriate unit.

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[8] See, for example, *Matter of Texas Foundries, Inc.*, 83 N. L. R. B. 679; *Matter of Charles Binns et al., d/b/a Binns Passaic Iron & Brass Foundry*, 77 N. L. R. B. 380. The Board has consistently, in the face of a contrary bargaining history, directed separate self-determination elections among groups of craft employees such as these, or among departmental groups with such a craft nucleus. See *Matter of The Fayscott Corporation*, 78 N. L. R. B. 1256. *Matter of The John Deere Dubuque Tractor Works*, 77 N. L. R. B. 1424. Cf. *Matter of Sacks-Barlow Foundries, Inc.*, 79 N. L. R. B. 327, in which the Board dismissed a petition seeking a unit which was neither departmental in scope nor a craft group.

[84 NLRB, at 956]

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations — Series 5, as amended, among the employees in the voting group described in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by International Molders and Foundry Workers Union of North America, AFL.[9]

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[9] As the Intervenor has not complied with the requirements of Section 9 (f), (g), and (h) of the Act, it will not be accorded a place on the ballot.

APPENDIX I

October 20, 1950

International Association of Machinists,
Lodge No. 359,
P. O. Box 902,
Birmingham, Alabama.

Attention: Mr. J. D. Baumgardner, Business Representative

Gentlemen:

We have heretofore discussed with you the confusion at our Bessemer Plant due to the fact that some employees are now bargained for by the union although belonging and paying dues to another and the further fact that other employees, while now bargained for by one union regardless of the payment of dues, should more appropriately be bargained for by another union. We have heretofore suggested that by agreement between the company and all the interested unions, and with the approval of each employee concerned, this confusion can be eliminated.

Attached hereto is a list by departments of our Plant showing the present bargaining representative of different employees in each such department, and showing the transfers which we are proposing to you and to the other interested unions.

The net result of the proposed transfers in so far as concerns increases and decreases in the various bargaining units will be as follows:

Steelworkers—22 men will be transferred to the machinists union, and 3 men will be transferred to the boilermakers union.

Machinists—9 men will be transferred to the steelworkers union.

Boilermakers—6 men will be transferred to the steelworkers union.

Steelworkers net loss: 11 men
Machinists net gain: 13 men
Boilermakers net loss: 3 men

(Page 2 of 3 pages)

We have contacted each individual employee who is proposed to be transferred from one bargaining unit to another and have explained the situation to each one of them and each one of them has consented and agreed to the transfers which we are proposing. Therefore, if the Steelworkers, Machinists and Boilermakers unions respectively all agree there will be no difficulty in our eliminating this unfortunate situation that now exists.

We assume that when everyone has agreed it will be appropriate for your union to surrender to us for cancellation checkoff cards signed by your men who are being transferred from your union to another bargaining unit and that, in like manner, we will obtain cancellation of checkoff cards signed by those men being transferred to your unit and that you will obtain and present to us new checkoff cards signed by the men so being transferred to your unit.

If you approve the proposed transfer, please indicate that fact on the carbon copy of this letter which is enclosed, and upon our receiving like approval from the other two interested unions we will make the changes effective as fo the 1st day of November, 1950, or as soon thereafter as other approvals can be obtained; furthermore, when the present contract expires and is re-written

the changes and/or transfers made in this letter will be clarified and written into the next agreement.

Yours very truly,

/s/ A. B. NOLAN
Personnel Director

/s/ J. S. BRIDGES
Resident Manager

ACCEPTED:

INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE NO. 359

By: /s/ J. D. BAUMGARDNER

/s/ D. T. FAUST

/s/ J. W. DORSEY

/s/ T. R. RICKETT

No. of Employees	Department	Classification	Certified Union	Transferred To
6	deLavaud--Machining Products	Machine Operators Pipe Cutters (Should be classified as Machine Operators)	Steelworkers	Machinists
3	Machining #1 Pit Products	Machine Operators	Steelworkers	Machinists
2	Machining #3 Pit Products	Machine Operators	Steelworkers	Machinists
5	Machine Shop	Crane Operators	Steelworkers	Machinists
3	Tools, Repair, Replacement	Flank Patcher #1 Flank Patcher #2 Trainee	Could be interpreted as Steelworkers	Boilermakers
5	Machine Shop	Crane Followers (Hookers)	Machinists	Steelworkers
4	Blacksmith	Helpers	Machinists	Steelworkers
6	Boilermakers	Boilermaker Helpers	Boilermakers	Steelworkers
2	deLavaud RME	Helpers (White) To be promoted to Millwright Trainees	Steelworkers	Machinists
3	Repairs to Machinery and Equipment	Millwright Helpers (White) To be promoted to Millwright Trainee	Steelworkers	Machinists

(Page 3 of 3 pages)

SUMMARY

Steelworkers–
23 men will be transferred to the Machinists
3 men will be transferred to the Boilermakers
NET LOSS–11 men

Machinists–
9 men will be transferred to Steelworkers
NET GAIN–14 men

Boilermakers–
6 men transferred to Steelworkers
NET LOSS 3 men

APPENDIX J

[Filed in Clerk's Office, Northern District of Alabama, Jan. 14, 1980. James E. Vandegrift, Clerk, United States District Court. By: Linda P. Clark.]

IN THE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

JOSEPH TERRELL, JR., et al., *Plaintiffs,* vs. UNITED STATES PIPE AND FOUNDRY COMPANY, et al., *Defendants.*	NO. CA 72-P-0887-S

RULE 54(b) CERTIFICATE

With respect to the dismissal of the plaintiffs' claims pursuant to the Memorandum of Opinion issued on October 16, 1979 against Local 2140, United Steelworkers of America, Local 342, International Molders and Allied Workers Union, Patternmakers Association of Birmingham, United Steelworkers of America, International Molders and Allied Workers Union, Patternmakers League of North America, International Association of Machinists and Aerospace Workers, and the Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers, it is CERTIFIED, in accordance with Rule 54(b), Fed. R. Civ. P.:

(1) That the Court has directed the entry of final judgment in favor of each of the defendants listed above; and

(2) That the Court has determined there is no just reason for delay.

/s/ SAM C. POINTER, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX K

[Filed in Clerk's Office, Northern District of Alabama, Jan. 14, 1980. James E. Vandegrift, Clerk, United States District Court. By: Linda P. Clark.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOSEPH TERRELL, JR., et al., *Plaintiffs,* vs. UNITED STATES PIPE AND FOUNDRY COMPANY, et al., *Defendants.*	CIVIL ACTION NO. 72-887

JUDGMENT

A Memorandum Opinion having been entered on October 16, 1979, which denied all the claims which the plaintiffs have asserted against Local 2140, United Steelworkers of America, Local 342, International Molders and Allied Workers Union, Patternmakers Association of Birmingham, United Steelworkers of America, International Molders and Allied Workers Union, Patternmakers League of North America, International Association of Machinists and Aerospace Workers, and the Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers and the Court having entered a Certificate pursuant to Rule 54(b), Fed. R. Civ. P. that there was no just reason for delay and expressly directing the entry of final judgment, it is

ORDERED, ADJUDGED and DECREED that judgment be and it is hereby entered in favor of the above-listed defendants.

/s/ SAM C. POINTER, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX L

[Filed in Clerk's Office, Northern District of Alabama, Jan. 14, 1980. James E. Vandegrift, Clerk, United States District Court. By: Linda P. Clark.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOSEPH TERRELL, JR., et al., *Plaintiffs,* vs. UNITED STATES PIPE AND FOUNDRY COMPANY, et al., *Defendants.*	CIVIL ACTION NO. 72-887

ORDER

Pursuant to the Memorandum Opinion entered on October 16, 1979, it is hereby

ORDERED that the claims of the plaintiffs against Lodge 359, International Association of Machinists and Aerospace Workers and Local 583, Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers are dismissed except for any claims which they may have due to their being injured by virtue of jobs not having remained in the seniority units to which they were allocated prior to the 1950 agreements.

/s/ SAM C. POINTER, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX M

[Filed in Clerk's Office, Northern District of Alabama, Jan. 14, 1980. James E. Vandegrift, Clerk, United States District Court. By: Linda P. Clark.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOSEPH TERRELL, JR., et al., *Plaintiffs,* vs. UNITED STATES PIPE AND FOUNDRY COMPANY, et al., *Defendants.*	CIVIL ACTION NO. 72-887

CERTIFICATE PURSUANT TO
28 U.S.C. §1292(b)

By Memorandum Opinion entered October 16, 1979 this Court denied plaintiffs' claims that the seniority system was unlawful because "the defendants have met the burden of proving the applicability of 42 U.S.C.A. §2000e2(h)," Slip Opinion, p. 19; that is, the defendants had demonstrated that the seniority system was bona fide and thus lawful pursuant to the standards established in *Teamsters v. United States*, 431 U.S. 32 (1977) and *James v. Stockham Valves and Fittings, Inc.*, 559 F.2d 310 (5th Cir. 1977). "The one exception [to this holding] relates to the transfer of certain jobs in 1950 between seniority units", Slip Opinion, p. 19. It was determined that this exception applied only to a limited portion of the claims which the plaintiffs had brought against two of the de-

fendants, Lodge 359, International Association of Machinists and Aerospace Workers and Local 583, Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers. The major portion of the plaintiffs' claims against Lodge 359, IAM and Local 583, Boilermakers have been denied pursuant to the determination that the seniority system is lawful. Having carefully reviewed this litigation, it is CERTIFIED in accordance with 28 U.S.C. §1292(b):

That the Memorandum Opinion involves a controlling question of law—the legality of the seniority system—as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

/s/ SAM C. POINTER, JR.
UNITED STATES DISTRICT JUDGE